

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-4043

Signed

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JAMES W. TIMEK,

Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

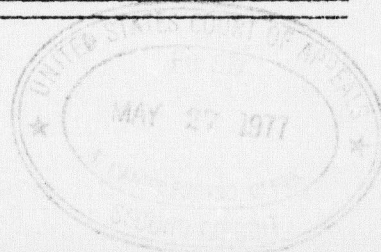
Appellee

ON APPEAL FROM THE DECISION OF
THE UNITED STATES TAX COURT

BRIEF FOR THE APPELLEE

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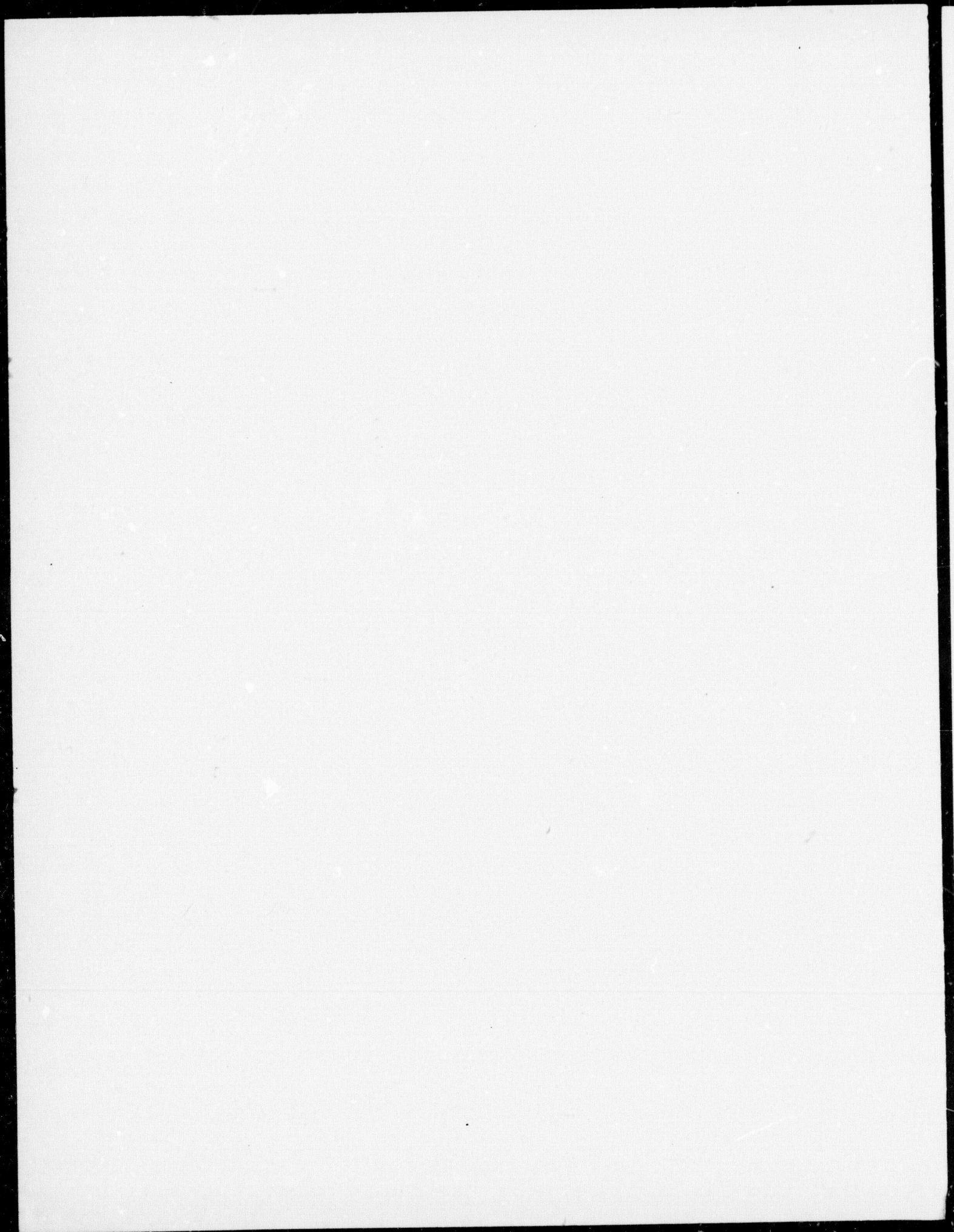


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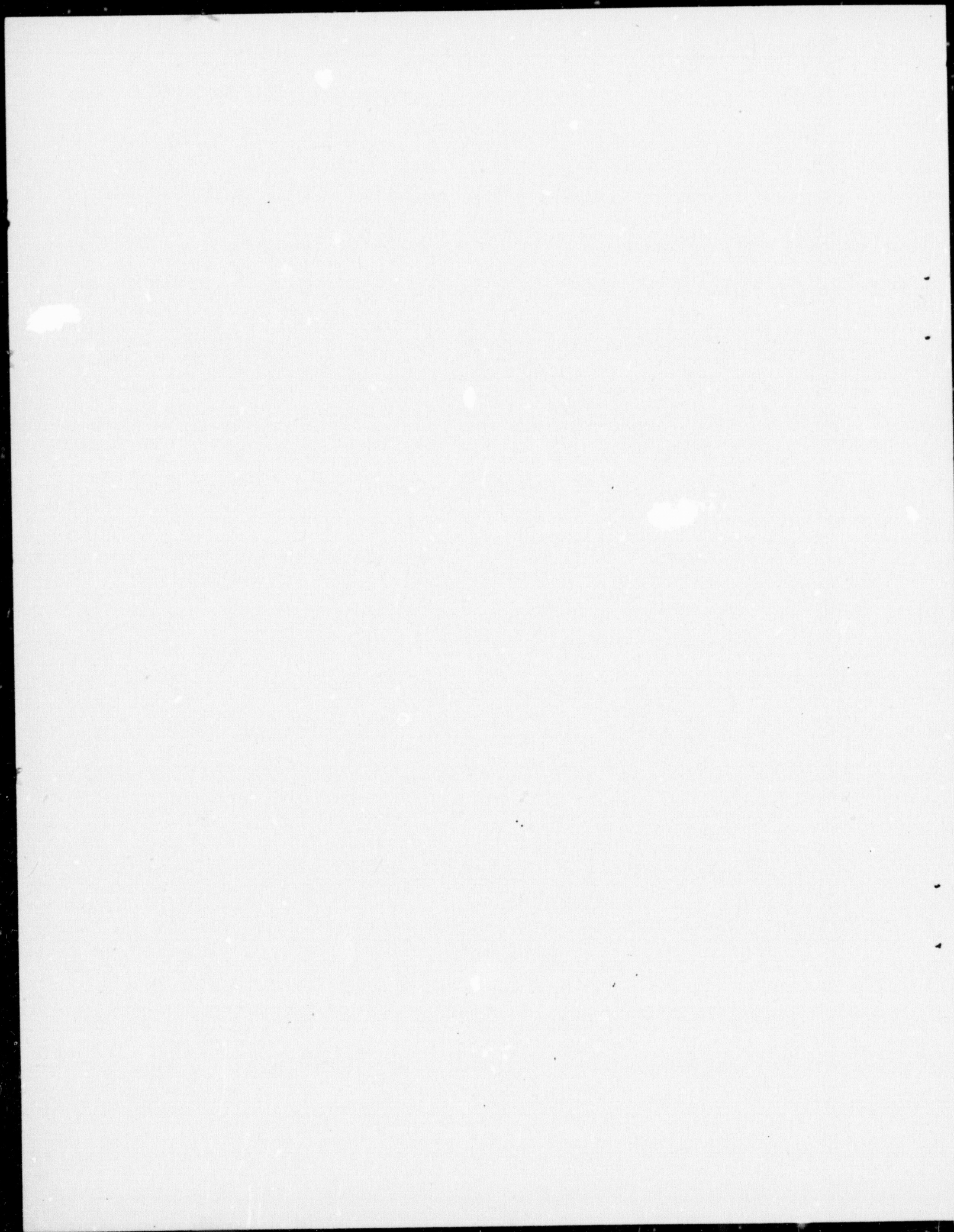
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No. 77-4043

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v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee

ON APPEAL FROM THE DECISION OF
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BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUES PRESENTED

1. Whether the Tax Court correctly held that part of each of taxpayer's underpayments of tax for the years 1966 through 1971 was due to fraud, and that, accordingly, assessments for the tax years 1966 through 1970 were not barred by the statute of limitations.

2. Whether the Tax Court properly found that taxpayer failed to disprove the correctness of deficiencies determined by the Commissioner for the tax years 1966 through 1971.

STATEMENT OF THE CASE

This case involves deficiencies in taxpayer's income taxes together with additions thereto for the years 1966 through 1971 in the total amount of \$47,850.18. (Decision, Appendix B, infra, p. 72.)^{1/} The Tax Court's memorandum findings of fact and opinion (Appendix B, infra, pp. 57-71), reported at 35 T.C.M..1622 (1977), were filed on November 29, 1976. The court's decision was entered on November 30, 1976. (Appendix B, infra, p. 72.) Taxpayer's notice of appeal to this Court was filed on January 25, 1977. (Appendix B, infra, p. 73.) Jurisdiction is conferred on this Court by Section 7482(a) of the Internal Revenue Code of 1954 (26 U.S.C.).

The facts as found by the Tax Court, as stipulated, and as otherwise disclosed in the record, may be summarized as follows:

Taxpayer, who resided in West Hartford, Connecticut, at the time of the filing of his petition in this case with the Tax Court, filed individual federal income tax returns for each of the calendar years 1966 through 1971. (Op. 3, Appendix B, infra, p. 59.)

^{1/} Taxpayer, who is appearing pro se, has not filed a record appendix in this case. For the court's convenience, we have included in Appendix B to this brief, the docket entries, notice of deficiency and attached explanations, petition, stipulation of facts and relevant exhibits, taxpayer's letter to the Tax Court, the opinion and decision, and the notice of appeal. In addition, we have included taxpayer's brief in the form of a letter dated March 5, 1977, and addressed to Mr. Crivelli of the Clerk's office, plus an attached exhibit, in Appendix C to this brief.

During the calendar year 1966, taxpayer sold 1,063 shares of General Telephone and Electronics Corporation (General Telephone) stock for \$48,127.82. (Stip. 2, Appendix B, infra, p. 42.) Petitioner realized a gain on the sale of this stock. At the time taxpayer filed his federal income tax return for the year 1966, he was aware that he had ~~realized~~ a gain on the sale of the 1,063 shares of General Telephone stock in the year 1966 and that part of the gain was taxable income. He neither referred to the sale of this stock on his federal income tax return, nor did he include as part of his income any amount attributable to the gain he realized on the sale of the stock. (Op. 13-14, Appendix B, infra, pp. 69-70.)

During the calendar year 1967, taxpayer sold 1,646 shares of General Telephone stock for \$80,331.37. (Stip. 2, Appendix B, infra, p. 42.) At the time taxpayer filed his federal income tax return for the year 1967, he knew that he had realized a taxable gain on the sale of the 1,646 shares of General Telephone stock and that tax was due on that gain. He did not at any place on his return report the sale of the 1,646 shares of General Telephone stock, and he did not include as part of his income any amount attributable to the gain he realized on the sale of that stock. (Op. 3-4, Appendix B, infra, pp. 59-60.)

On March 23, 1973, taxpayer entered a plea of guilty to a violation of Section 7201 for the taxable year 1967 in the United States District Court for the District of Connecticut in the case

of United States of America v. James W. Timek, Criminal No. H-446. On that same date, that court entered a judgment in that case finding taxpayer guilty of violation of Section 7201 for the year 1967. (Stip. 3, Appendix B, infra, p. 43.)

During the calendar year 1968 taxpayer sold 200 shares of First Mortgage Investors stock for \$3,790. (Stip. 2, Appendix B, infra, p. 42.) At the time taxpayer filed his federal income tax return for the calendar year 1968, he knew he had realized a gain on the sale of the 200 shares of First Mortgage Investors stock during the calendar year 1968, but on his federal income tax return for that year he did not report the sale of this stock and he did not include as part of his taxable income any amount attributable to the gain he realized on the sale of that stock. (Op. 4, Appendix B, infra, p. 60.)

During the calendar year 1969, taxpayer sold 300 shares of General Telephone stock for \$10,673.78. (Stip. 2, Appendix B, infra, p. 42.) At the time taxpayer filed his federal income tax return for the calendar year 1969, he knew he had realized a gain on the sale of the 300 shares of General Telephone stock, but he did not show the sale of this stock at any place on his federal income tax return for that year and he did not include as part of his taxable income any part of the amount attributable to the gain he realized on the sale of the stock. (Op. 5, Appendix B, infra, p. 61.)

On his federal income tax return for the calendar year 1969, taxpayer reported on Schedule D the sale of 170 shares of Giant Arrow Fund Investment Club stock on September 10, 1969, at a gross sales price of \$22,190 with a net short-term loss of \$5,770. . On page 1 of his 1969 return, he listed on Line 14 "Other income" \$1,000 of this loss and reduced his otherwise reported income by that amount. (Ex. 4-D, Appendix B, infra, pp. 45-46.)

On Schedule D of his individual income tax return for the calendar year 1970, taxpayer reported a short-term capital loss of \$646.48 attributable to an apparent sale of 220 shares of the Grant Arrow Fund Investment Club the gross sales price of which he indicated as \$28,000. To this reported loss he added \$2,700 which he attributed to "year 1969." (Ex. 5-E, Appendix B, infra, p. 48.)^{2/}

In Part II of Schedule D "Summary of Schedule D Gains and Losses." taxpayer showed a total net loss of \$1,000 and on page 1 of his 1970 federal income tax return reduced his otherwise reported income by \$1,000, which was shown on Line 15 "Income other than wages, dividends, and interest" as "loss 1,000." (Ex. 5-E, Appendix B, infra, pp. 48, 50.)

^{2/} The \$2,700 reported by taxpayer was apparently the amount of the loss carryover to which taxpayer asserted he was entitled as a result of the short-term capital loss of \$5,770 he reported on his 1969 return from the sale of 170 shares of the Giant Arrow Fund Investment Club. During the years at issue, Code Section 1211(b) limited the amount by which the excess of short-term capital losses over short-term capital gains could be used to offset other income to \$1,000. Thus, taxpayer deducted \$1000 from his other income in 1969. Any excess short-term capital loss can be considered as a short-term loss in the succeeding taxable year pursuant to Code Section 1212(b). It is not clear, however, why taxpayer indicated only a \$2,700 loss carryover, when, except for the gain which he did not report, he apparently would have been entitled to a carryover of \$4,770.

At the time taxpayer filed his federal income tax return for the calendar year 1970, he knew that he had sufficient capital gains in the calendar year 1969 to offset all of his capital losses for that year from a sale in that year of Giant Arrow Fund Investment Club stock at a loss, and that, in fact, he had no loss carryover from the sale of this stock to the calendar year 1970. (Op. 6, Appendix B, infra, p. 62.)

During the calendar year 1971, taxpayer sold 200 shares of General Telephone stock for \$6,605.36. (Stip. 3, Appendix B, infra, p. 43.) At the time taxpayer filed his federal income tax return for the calendar year 1971, he knew he had realized a gain on the sale of the 200 shares of General Telephone stock. The sale of this stock was not reported by taxpayer on his federal income tax return for the calendar year 1971 and no amount attributable to the gain taxpayer realized in the year 1971 from the sale of this stock was included in the income reported on his federal income tax return for that year. (Op. 7, Appendix B, infra, p. 63.)

On Schedule D of his 1971 income tax return taxpayer combined a purported long-term loss carry-over from 1970 with other net losses attributable to 1971 transactions resulting in a net long-term capital loss in excess of \$2,000.^{3/} He reported a loss of \$1,000 in line 35 of page 2 of his Form 1040 which he then subtracted from his other income on line 15 of Form 1040 in arriving at

^{3/} Taxpayer reported a long-term capital loss of \$1,120.43 attributable to the sale of an undisclosed number of shares of Financial Programs. In addition, he reported a long-term capital gain distribution of \$51.39 and a long-term capital loss of \$177.55 attributable to his share of a partnership distribution. These three amounts resulted in a reported net long-term capital loss of \$1,246.59. In addition taxpayer reported a short-term capital loss of \$391.31 attributable

adjusted gross income. (Ex. 6-F, Appendix B, infra, pp. 51, 52.)^{4/}

During the calendar year 1971, taxpayer realized interest income in the amount of \$3,114 which he failed to report on his federal income tax return. On April 14, 1973, taxpayer filed an amended return (Form 1040X) for the calendar year 1971 on which the \$3,114 of interest income was reported. (Stip 3, Appendix B, infra, p. 43.)

Taxpayer began acquiring stock of General Telephone in 1949, but he did not retain records of the cost of the stock he acquired. Taxpayer had since 1949, when he began purchasing General Telephone stock, maintained an account with the brokerage firm of Shearson, Hammil & Co. in Hartford, Connecticut. The firm had records with respect to taxpayer's account for the years 1966 through 1971, but it had not retained records of taxpayer's accounts for the years prior to 1965. (Op. 8, Appendix B, infra, p. 64.)

^{3/} (Continued)

to his share of a 1971 partnership distribution. Together with a proported long-term loss carry-over in the amount of \$2,023.04, reported losses totalled \$3,660.94. (Ex. 6-F, Appendix B, infra, p. 51.)

^{4/} During the years at issue, under Code Section 1211(b) only one half of any net long-term capital loss could be used to offset up to a maximum of \$1,000 of ordinary income.

From taxpayer's brokerage account, Internal Revenue agents were able to obtain the certificate numbers of the General Telephone stock and the First Mortgage Investors stock which petitioner sold during the years 1966 through 1971. With these certificate numbers, the agents were able to determine the date each certificate was issued. Because they had no records from which to determine the amount which petitioner paid for the stocks he sold during the years 1966 through 1971, the agents inquired as to how far in advance of the issuance of a stock certificate the stock covered by such certificate normally would have been purchased. On the basis of their inquiries the agents concluded that generally stock was purchased approximately three weeks prior to the date of the issuance of the certificate. (Op. 9, Appendix B, infra. p. 65.)

The agents checked the published stock market reports for the listed stocks which taxpayer had purchased for the entire third week preceding the date of the issuance of a certificate of stock to taxpayer. They then used as taxpayer's purchase price of the stock, the highest reported market price at which the stock had been sold during the third week preceding the week the stock certificate was issued to taxpayer. By subtracting the cost computed in this manner for the stocks sold by taxpayer in the years here in issue from the actual sales price he received for these stocks, the agents computed taxpayer's gain on the sale of the stocks for each year here in issue. (Op. 10, Appendix, infra, p. 66.)

In his notice of deficiency, dated April 2, 1974, the Commissioner increased taxpayer's reported income for the years 1966, 1967, 1969 and 1971 by the unreported capital gains on taxpayer's sales of General Telephone stock during those years, increased the reported income for 1968 by the unreported gain on the sale of First Mortgage Investors stock during that year, and increased the reported income for 1971 by the amount of interest income which taxpayer had failed to report. (Notice of Deficiency, Appendix B, infra, pp. 29-30.)

Because the gain from the sale of General Telephone stock during 1969 exceeded the reported losses for that year, the Commissioner disallowed the \$1,000 deduction taken by taxpayer for capital losses on his 1969 return. (Explanation of Adjustments, Appendix B, infra, p. 35.) He then disallowed the \$1,000 deduction taken by taxpayer on his 1970 return for capital losses because there was no loss carry-over available from 1969, and for the additional reason that the Commissioner re-characterized as an ordinary loss taxpayer's reported short-term loss of \$646.48.^{5/} (Explanation of Adjustments, Appendix B, infra, p. 36.) Further, he disallowed the \$1,000 capital loss deduction taken in 1971 because the unreported gains during that year exceeded the reported losses, and because no loss carry-over was available to further offset gains.^{6/}

^{5/} For the year 1970, Commissioner allowed additional losses totalling \$55.37 which had not been claimed by taxpayer on his return. (Explanation of Adjustments, Appendix B, infra, p. 36.)

^{6/} In addition to the adjustments made as a result his adding to income the unreported gains for the years in issue, the Commissioner disallowed for the years 1966 through 1970, one half the standard deduction taken by taxpayer. Taxpayer was married to Catherine Timek during the years 1966 through 1970, but nevertheless he filed as a head of household and claimed on his returns for those years a standard deduction in the amount to which he and his wife

(Explanation of Adjustments, Appendix B, infra, p. 37.) To the resulting deficiency in income computed for each year, the Commissioner added a 50-percent fraud penalty as provided in Code Section 6653(b).

(Explanation of Adjustments, Appendix B, infra, p. 34.)

In his petition to the Tax Court, taxpayer challenged the deficiencies with respect to the unreported capital gain on the ground that the Commissioner's determination of the adjusted basis of the stock was erroneous.^{7/} In addition he asserted that any deficiency for the years involved was not due to fraud. Finally, he contended that any assessments for the years 1966 thru 1970 were barred by the statute of limitations. (Petition, Appendix B, infra, pp. 26-28.)

Taxpayer also asserted at trial^{8/} that he should be given some allowance against the deficiencies for the years 1966 through 1971 because of a loss sustained in 1972 on funds he had deposited in

6/ (continued)

would have been entitled if they had filed joint returns. The Commissioner also recomputed taxpayer's tax for 1966 through 1970 based on rates applicable to married persons filing separate returns instead of heads of households. Taxpayer did not challenge these adjustments in his petition to the Tax Court (Petition, Appendix B, infra, p. 26-28), nor has he raised these issues on this appeal.

7/ At the trial, taxpayer stipulated the correctness of the sales price of the stocks as determined by the Commissioner. (Op. 4-11, Appendix B, infra, pp. 60-67.)

8/ Although this contention regarding the 1972 and 1973 losses was not contained in the pleadings, taxpayer raised the issue orally at trial. However, because Judge Scott indicated at trial that she would hold for the Commissioner and that no briefs need be filed, a transcript was not prepared and, accordingly, is not part of the record on appeal.

savings accounts in a bank in Nassau, Bahamas,^{9/} and for an amount of \$15,000 which he gave to an attorney in 1973 to pay on his federal income tax liabilities, and which the attorney had not paid to the Internal Revenue Service at the time of his death. (Op. 14, Appendix B, infra, p. 70.)

The Tax Court sustained the Commissioner's determinations, finding that taxpayer had not adequately supported his contention that the adjusted bases for the shares of stock sold during the years in question were higher than the bases as determined by the Commissioner. (Op. 14, Appendix B, infra, p. 70.) In addition, the Court found that part of taxpayer's understatement of tax for each of the years in issue was due to fraud and that therefore the deficiencies for fraud penalties were correct. (Op. 12, Appendix B, infra, p. 68.) As a consequence, it found the statute of limitations had not expired with respect to any of the years in issue. (Op. 13, Appendix B, infra, p. 69.) Finally, it rejected taxpayer's contention with respect to the losses allegedly incurred during 1972 and 1973 pointing out that neither of those years was properly before the court. (Op. 14, Appendix, infra, p. 70.)

This appeal followed.

^{9/} Taxpayer referred to these losses in a letter dated October 28, 1976, which he sent to Judge Scott after completion of the trial but before entry of the decision (Letter-Brief, Appendix B, infra, p. 55). In his brief in the form of a letter to Mr. Crivelli of the office of the Clerk of the Court for the Second Circuit, taxpayer relates additional details concerning these purported losses, as discussed, infra.

SUMMARY OF ARGUMENT

The Commissioner determined deficiencies in taxpayer's income taxes for the years 1966 through 1971 resulting from substantial amounts of unreported capital gains from the sale of stock during those years. In addition, the Commissioner added a fraud penalty of 50 percent of the underpayments.

The Commissioner met his burden of proving by clear and convincing evidence that at least part of the underpayment of tax for each of the years in question was due to fraud. With respect to 1967, taxpayer pled guilty in 1973 to a criminal charge of evasion for 1967 and was therefore estopped from contesting the civil fraud penalty for that year. With respect to the remaining years in question, taxpayer admitted that upon filing his return he knew he had omitted part of his income and had understated his taxes, but he offered no explanation for the omissions. Since the underreporting was substantial and consistent, the Tax Court had no choice other than to sustain the determination of fraud. Further, because the understatements were due to fraud, the statute of limitations did not bar assessments for the deficiencies in issue.

The taxpayer failed to overcome the presumption that the determinations of deficiencies relating to the unreported income were correct. At trial, he offered only his unsupported estimate that he had paid a higher price for his stock than that determined

by the Commissioner, and that therefore the unreported gain was actually less than that determined by the Commissioner. Accordingly, the Tax Court correctly found that taxpayer failed to meet his burden of proving that the Commissioner's determinations were erroneous.

Finally, the Tax Court correctly found that it could not consider certain losses allegedly sustained by taxpayer during 1972 and 1973, since neither of those years was properly before the court.

ARGUMENT

THE TAX COURT DID NOT ERR IN CONCLUDING THAT TAXPAYER WAS LIABLE FOR DEFICIENCIES AND FRAUD PENALTIES FOR THE YEARS 1966 THROUGH 1971

- A. The Tax Court correctly found that part of each of taxpayer's underpayments in question was due to fraud and that, accordingly, assessments for the years 1966 through 1970 were not barred by the statute of limitations

In his petition to the Tax Court, taxpayer challenged the deficiencies determined by the Commissioner for tax years 1966 through 1971 relating to unreported income from taxpayer's sales of stock during the years 1966, 1967, 1968, 1969 and 1971. The Tax Court properly found that the deficiencies were correct, and its decision should be affirmed.

The deficiency for each of the years in question included a penalty of 50 percent of the amount of underpayment pursuant to Internal Revenue Code of 1954, Section 6653(b), Appendix A, infra. That section provides that if any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. Unlike other determinations of the Commissioner, his allegation of fraud enjoys no presumption of correctness; rather, the Commissioner has the burden of proving fraud by clear and convincing evidence. O'Connor v. Commissioner, 412 F. 2d 304, 310 (C.A. 2, 1969); cert. denied, 397 U.S. 921 (1970); United States v. Prince, 348 F. 2d 746, 748, fn. 3 (C.A. 2, 1965). See also, Paddock v. United States, 280 F. 2d 563 (C.A. 2, 1960).

Taxpayer was convicted in 1973 of willfully attempting to evade or defeat his tax for the year 1967 under Section 7201 of the Code (26 U.S.C.). It is well established that a criminal conviction for tax evasion resulting from either a trial on the merits or a guilty plea, collaterally estops a taxpayer from contesting a civil fraud penalty for the same year. Neaderland v. Commissioner, 424 F. 2d 639, 642 (C.A. 2, 1970), cert. denied, 400 U.S. 827 (1970); United States v. Carlino, 400 F. 2d 56, 57 (C.A. 2, 1968), cert. denied, 394 U.S. 1013 (1969); see also Plunkett v. Commissioner, 465 F. 2d 299, 305-306 (C.A. 7, 1972); Amos v. Commissioner, 360 F. 2d 358, 359 (C.A. 4, 1965); Tomlinson v. Lefkowitz, 334 F. 2d 262 (C.A. 5, 1964), cert denied, 379 U.S. 962 (1965). This is because the "criminal conviction necessarily carries with it the ultimate factual determination that the underpayments of tax were 'due to fraud' within the meaning of Section 6653(b)." Plunkett v. Commissioner, *supra*, p. 305. See also Considine v. Commissioner, 68 T.C. No. 6 (1977); Artic Ice Cream Co. v. Commissioner, 43 T.C. 68 (1964). Thus, the Tax Court, properly held that taxpayer was estopped from denying that a part of his underpayment of his 1967 income tax was due to fraud.

The Tax Court's finding of fraud for the remaining years at issue must be sustained by this Court unless clearly erroneous. Commissioner v. Duberstein, 363 U.S. 278, 291 (1960); O'Connor v. Commissioner, *supra*, p. 309-310. Not only was the Tax Court's conclusion not clearly erroneous, but it was virtually compelled by the record. Taxpayer testified that he knew at the time he

filed his returns that he omitted part of his income, and that his tax as reported was consequently understated. (Op. 12, Appendix B, infra, p. 68.) And this underreporting was substantial in amount, and it was knowingly done consistently over several years; such consistent and substantial understatement of income is strong evidence of fraud. O'Connor v. Commissioner, supra, p. 310. See also, United States v. Tighino, 396 F. Supp. 743 (E.D. N.Y., 1975). On these facts, the Court had no choice but to conclude, as it did, that the Commissioner had clearly demonstrated that the understatement was due to fraud in each of the years in question.

In view of the finding that the understatements were due to fraud, it necessarily follows that, as the Tax Court concluded, the statute of limitations was no bar to the assessment of taxes for any of the years in issue. Section 6501(a), Appendix A, infra, provides generally that the amount of any income tax shall be assessed within three years after a return is filed. Section 6501(b), Appendix A, infra, provides that where an income tax return is filed before the last day prescribed for filing such a return (i.e., April 15), it shall be considered as having been filed on such last day for purposes of Section 6501(a). Since the notice of deficiency was mailed on April 2, 1974, the three-year period would normally have already expired as to 1966 through 1970. However, Section 6501(c)(1), Appendix A, infra, provides an exception to this rule so that a tax with respect to a false or fraudulent return made with the intent to evade the tax may be assessed at any time.

A finding of fraud for purposes of Section 6653(a) amounts to a finding of a fraudulent return within the meaning of Section 6501(c) (1). See Plunkett v. Commissioner, supra, p. 304; Fuller v. Commissioner, 313 F. 2d 73, 75 (C.A. 6, 1963). Thus, the statute of limitations could not bar any of the assessments proposed by the notice of deficiency for the years 1966 through 1970.

B. The taxpayer failed to prove that the Commissioner's determinations of deficiencies with respect to unreported income were erroneous

With respect to the deficiencies which resulted from the unreported income, the Commissioner's determinations were presumptively correct, and taxpayer had the burden of showing them to be erroneous. Welch v. Helvering, 290 U.S. 111, 115 (1933); Helvering v. Taylor, 293 U.S. 507, 514 (1935); Zeeman v. United States, 395 F. 2d 861, 866 (C.A. 2, 1968); United States v. Lease, 346 F. 2d 696, 700 (C.A. 2, 1965). Taxpayer failed to meet this burden.

Taxpayer contended that he had a higher cost basis in his stock and that consequently the actual amount of gain attributable to each of the sales of stock was less than determined by the Commissioner. Taxpayer, however, offered no evidence other than his unsupported estimate of the prices he paid for the stock. (Op. 2, Appendix B, infra, p. 58.) On the other hand, the Commissioner's method for determining cost basis (as explained, supra) was fair and reasonable. Hence, the Tax Court correctly

concluded that taxpayer did not overcome the presumption of correctness which attached to the computations. This finding was not clearly erroneous and should not be disturbed on appeal. Commissioner v. Duberstein, supra; O'Connor v. Commissioner, supra.

- C. The Tax Court was correct in holding that it did not have jurisdiction to consider losses allegedly incurred by taxpayer during 1972 and 1973

Taxpayer asserted in the Tax Court and on appeal that during 1972 and 1973 he suffered certain losses the total amount of which exceeded the deficiencies for 1966 through 1971, and indicated that these events should somehow affect the outcome of this case.

Specifically, taxpayer alleges that as a result of a 1972 bankruptcy of the International Bank and Trust Limited of Nassau, Bahamas, he lost a total of \$86,495.72 which had been on deposit in two savings accounts. (Letter of October 28, 1976, Appendix B, infra, p. 55; Letter of March 5, 1977, Appendix C, infra, p. 74); in addition, taxpayer alleges that in 1973 he delivered \$15,000 to his former attorney for payment to the Internal Revenue Service, but that the attorney neither transmitted any of the money to the Internal Revenue Service nor returned it to taxpayer prior to his ^{10/} death. (Letter of March 5, 1977, Appendix C, infra, p. 74.)

^{10/} In his brief (in the form of a letter), taxpayer asserts that the \$15,000 was given to the attorney to be paid "on behalf of my civil charges related to this tax liability." (Letter of March 5, 1977, Appendix B, infra, p. 74.) It is unlikely, however, that any such payment made in 1973 would have related to the liabilities in issue. The notice of deficiency in this case was not mailed until April 2, 1974 (Notice of Deficiency, Appendix B., infra, p. 29); and there is no indication in the record of any attempts to settle the liabilities prior to issuance of the notice.

The Tax Court correctly ruled that it could not consider any issues with respect to 1972 and 1973, and thus whether taxpayer actually sustained the alleged losses was immaterial to the case.^{11/}

It is well settled that the jurisdiction of the Tax Court is limited to redeterminations of deficiencies in income tax for the year or years for which the Commissioner has determined a deficiency and has issued and mailed a statutory notice of deficiency. Sections 6211, 6212, 6213 (26 U.S.C.); Commissioner v. Gooch Co., 320 U.S. 418, 422 (1943); Kennedy v. Commissioner, 339 F. 2d 335, 337 (C.A. 7, 1964); Harris v. Commissioner, 29 T.C.M. 1510, 1511 (1970), aff'd per curiam, 73-1 U.S.T.C. par. 9205 (C.A. 9, 1972), cert. denied, 410 U.S. 966 (1973). Cf. Brook v. Commissioner, 360 F. 2d 1011 (C.A. 2, 1966). The notice of deficiency mailed by the Commissioner to taxpayer on April 2, 1974 contained determinations of deficiencies only for

10/ (continued):

Apparently in regard to the alleged payment to the attorney, taxpayer has attached to his letter to this Court a copy of a check dated April 12, 1973, presumably made out by the attorney to the order of the Internal Revenue Service on taxpayer's behalf; taxpayer states that this check was never received by the Internal Revenue Service. (Letter, supra.) The relevance of the check is not clear. In any event, the copy does not indicate whether the check was cancelled, or even whether the attorney signed it.

11/ Presumably, losses incurred in later years could produce deductions in one or more of the years in issue only by virtue of the loss carryback provisions of Section 172 of the Internal Revenue Code of 1954 (26 U.S.C.). Taxpayer has not indicated, however, that he is claiming any such loss carryback.

the tax years 1966 through 1971. Therefore, the Tax Court was without jurisdiction to consider any question with respect to taxpayer's alleged losses sustained during 1972 and 1973.^{12/}

CONCLUSION

For the above-stated reasons, the decision of the Tax Court should be affirmed.

Respectfully submitted,

MYRON C. BAUM,
Acting Assistant Attorney General,

GILBERT E. ANDREWS,
ROBERT-A. BERNSTEIN,
TIMOTHY B. McBRIDE,
Attorneys,
Tax Division,
Department of Justice,
Washington, D.C. 20530.

MAY, 1977.

^{12/} Even if the Tax Court had jurisdiction over the years 1972 and 1973, there is serious question as to whether any issue with respect to the purported losses would have been cognizable inasmuch as the issue was not raised in taxpayer's petition to the court. See Anderson v. Commissioner, 527 F. 2d 198 (C.A. 9, 1975); Brook v. Commissioner, supra.

CERTIFICATE OF SERVICE

It is hereby certified that service of this brief has been made on the appellant, appearing pro se, by mailing four copies thereof on this 25th day of May, 1977, in an envelope with postage prepaid, properly addressed to him as follows:

James W. Timek
18 Haley Street
West Hartford, Connecticut 06110

Gilbert E. Andrews, Jr.
GILBERT E. ANDREWS,
Attorney.

APPENDIX A

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) General rule.--Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) * * * and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

(b) Time Return Deemed Filed.--

(1) [as amended by Sec. 105(f)(3), Foreign Investors Tax Act of 1966, P.L. 89-809, 80 Stat. 1539] Early return.--For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 21, or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

* * *

(c) Exceptions.--

(1) False return.--In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

* * *

SEC. 6653. FAILURE TO PAY TAX.

* * *

(b) Fraud.--If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. * * *

* * *

APPENDIX B
UNITED STATES TAX COURT
GENERAL DOCKET

DOCKET NO. 4055-74

JAMES W. TIMEK 18 Foley St. West Hartford, Connecticut 06110 PETITIONER.	APPEARANCES FOR PETITIONER: (W/D 5/13/70) James N. Egan, 60 Washington St., Hartford, Conn. 06105 (June 27, 1974)
VS.	
COMMISSIONER OF INTERNAL REVENUE,	
RESPONDENT.	

Date Month Day Year	Filings and Proceedings	Action	Served
Jun 7, 1974	PETITION FILED: FEE PAID June 7, 1974		JUN 14 1974
June 13, 1974	ORDER, for Proper Petition due August 15, 1974.		JUN 14 1974
June 24, 1974	AMENDED Pet. filed		June 25, 1974
June 24, 1974	REQUEST by Petr. for trial at New Haven, Conn.	GRANTED June 25, 1974	June 25, 1974
June 24, 1974	SECOND AMENDED PETITION filed.		JUL 2 1974
June 27, 1974	ORDER, that the petition filed June 24, 1974 at Dkt. no. 4456-74 is directed to be filed as of June 24, 1974 as the "Second Amended Petition" at Dkt. No 4055-74 and further ORDER, that James N. Eagan is recognized as counsel for petr in the case at Dkt. no. 4055-74.		JUL 2 1974
Aug. 23, 1974	ANSWER TO SECOND AMENDED PETITION by Resp. filed.		Aug. 26, 1974
Jan. 16, 1975	REPLY to Resp's Answer to Second Amended PETITION		
Feb. 4, 1975	MOTION by Petr. for leave to file Reply to Answer to Second Amended Petition out of time. (No Obj. Resp.)	GRANTED Feb. 5, 1975	FEB 7 1975
Feb. 5, 1975	REPLY to Resp's Answer to Second Amended Petition filed by Petr.		Feb. 7, 1975
July 14, 1975	NOTICE OF TRIAL on Oct. 20, 1975 at Bridgeport, Conn.		July 14, 1975
Oct. 20, 1975	HEARING at Bridgeport, Conn. before Judge Fay. Oral motion for continuance by Resp. - see order.		

(over) (Cont. to Page 2)

DOCKET NO. 4055-74

(Continuation)

JAMES W. TIMEK			PETITIONER	PAGE 2
Date			Action	Served
Month	Day	Year		
Oct.	20,	1975	ORDER OF CONTINUANCE for settlement purposes to Jan. 7, 1976 at Washington, D.C.	JUL 29 1975
Nov.	25,	1975	MOTION by Resp. to restore case to the General Trial Docket.	
Dec.	2,	1975	ORDER that resp. motion dated Nov. 25, 1975, is GRANTED and this case is stricken from the calendar of the Jan. 7, 1976, Wash., D.C. motions session and restored to the general docket.	DEC 4 1975
May	12,	1976	MOTION by Bourke G. Spellacy to withdraw James N. Egan as counsel of record.	See Order May 13, 1976
May	13,	1976	ORDER, that Motion / Withdraw filed May 12, 1976 is granted and James N. Egan is withdrawn as counsel of record in this case.	MAY 17 1976
July	14,	1976	NOTICE OF TRIAL on Oct. 18, 1976 at Bridgeport, CT	July 14, 1976
Oct.	18,	1976	TRIAL at Bridgeport, CT, before Judge Scott.	
			Stipulation of facts with exhibits filed.	
			NO BRIEFS DUE:	
			SUBMITTED TO JUDGE SCOTT.	
Nov.	1,	1976	BRIEF for Petr. filed. (file & serve per Judge)	NOV 2 1976
Nov.	4,	1976	TRANSCRIPT of Oct. 19, 1976 rec'd..	
Nov.	29,	1976	MEMORANDUM FINDINGS OF FACT & OPINION filed, Judge Scott.	NOV 29 1976
			Decision will be entered for the resp.	
Nov.	30,	1976	DECISION ENTERED, Judge Scott.	Nov. 30, 197
			APPELLATE PROCEEDINGS	
Jan.	25,	1977	NOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Petr.	Jan. 26, 197
Jan.	28,	1977	NOTICE of Filing with copy of notice of appeal sent to Chief Counsel, Mr. Meade Whitaker.	Jan. 26, 197

(Continued to page 3)

GPO 1975 O-479-0

UNITED STATES TAX COURT

JAMES W. TIMEK,
Petitioner

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

:
:
:
:
:
:
:

4255-74
Docket No.

[Filed June 24, 1974]

PETITION

The Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (AU:R:90D) dated April 2, 1974, and as the basis for his case alleges as follows:

1. The Petitioner is James W. Timek, an individual, with legal residence at 662 Flatbush Avenue, West Hartford, Connecticut, 06110. The return for the period here involved was filed with the Office of the Internal Revenue Service at Andover, Massachusetts.

2. The notice of deficiency (a copy of which, including so much of the statement and schedules accompanying the notice is material, is attached and marked Exhibit A,) was mailed the Petitioner on April 2, 1974, and was issued by the Office of Internal Revenue Service at Hartford, Connecticut.

3. The deficiencies as determined by the Commissioner are income taxes for the calendar years ending December 31,

1966 (\$9,143.76 plus \$4,571.88 penalty), December 31, 1967, (\$14,982.97 plus \$1.48 penalty), December 31, 1968 (\$1,013.94 plus .97 penalty), December 31, 1969 (\$2,361.87 plus \$1,180.94 penalty), December 31, 1970 (\$1,313.56 plus \$656.78 penalty) and December 31, 1971 (\$3,084.02 plus \$1,542.01 penalty).

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

- a. Commissioner's determination of adjusted basis and selling price of stock which created unreported income that is the basis of the deficiency is erroneous.
- b. Commissioner's assessment of penalty with respect to the years in question is erroneous, in that the deficiency with respect to years 1966, 1967, 1968, 1969, 1970 and 1971 was not the result of fraud.
- c. Commissioner's assessment of taxes with respect to all years other than 1971 barred by three year statute of limitations.

5. The facts upon which the Petitioner relies are as follows:

- a. Commissioner's determination with respect to adjusted basis of stock in question is erroneous in that the price listed is too low while the Commissioner's determination with respect to the sale price of the

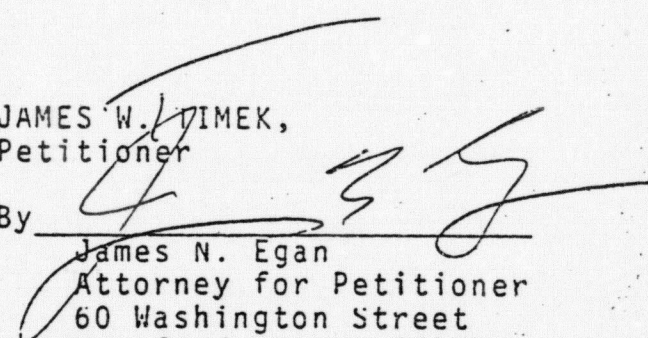
stock in question is too high.

- b. Petitioner's deficiency for the years 1966, 1967, 1968, 1969, 1970 and 1971 were not the result of fraud but rather as a result of the Petitioner's ignorance of the law.
- c. Deficiency assessment was dated April 2, 1974 which is more than three years after the date on which the Petitioner filed returns for the years 1966, 1967, 1968, 1969 and 1970.

Wherefore, the Petitioner prays that this Honorable Court dismiss the Commissioner's assessment of deficiency and imposition of penalty or grant such other relief as may be appropriate.

Dated: June 21, 1974.

JAMES W. DIMEK,
Petitioner

By 
James N. Egan
Attorney for Petitioner
60 Washington Street
Hartford, Conn. 06106

Tel. Area 203 - 527-5253

Department of the Treasury

P. O. Box 2575

Hartford, Connecticut 06101

[Exh. 6.1 A]

District Director

Internal Revenue Service

Date: APR 2 1974

In reply refer to:

AU:R:90D

Call: 222-3061



Mr. James W. Timck
662 Flatbush Avenue
West Hartford, Connecticut 06110

Dear Mr. Timck:

Tax Year Ended:

Deficiency

SEE ATTACHED

This letter is to notify you—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Sincerely yours,

~~James W. Timck~~ Donald C. Alexander
Commissioner

By

Enclosures:
Waiver Form 870
Statement
Envelope

Joseph J. Carley Jr.
District Director

vb

Mr. James W. Timok
662 Flatbush Avenue
West Hartford, Connecticut 06110

<u>Tax Year Ended</u>	<u>Deficiency</u>	<u>Addition to Tax</u> <u>Internal Revenue Code of 1954</u> <u>Section 6653(b)</u>
December 31, 1966	\$ 9,143.76	\$4,571.88
December 31, 1967	14,982.97	7,491.48
December 31, 1968	1,013.94	506.97
December 31, 1969	2,361.87	1,180.94
December 31, 1970	1,313.56	656.78
December 31, 1971	\$ 3,084.02	\$1,542.01

In making this determination of your 1971 tax liability, careful consideration has been given to your amended return, Form 1040X, filed on April 14, 1973.

AU:R:90D

FORM 870 (REV. APRIL 1971)	DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT	DATE RECEIVED BY INTERNAL REVENUE SERVICE
-------------------------------	---	---

Pursuant to section 6213(d) of the Internal Revenue Code of 1954, or corresponding provisions of prior internal revenue laws, the undersigned waives the restrictions provided in section 6213(a) of the Internal Revenue Code of 1954, or corresponding provisions of prior internal revenue laws, and consents to the assessment and collection of the following deficiencies in income tax and penalty with interest as provided by law. The undersigned also accepts as correct the following overassessments in income tax and penalty:

DEFICIENCIES			
TAX YEAR ENDED	AMOUNT OF TAX	PENALTY	
December 31, 1966	\$ 9,143.76	Section 6653(b) \$4,571.88	
December 31, 1967	14,982.97	7,491.48	
December 31, 1968	1,013.94	506.97	
December 31, 1969	2,361.87	1,180.94	
OVERASSESSMENTS			
TAX YEAR ENDED	AMOUNT OF TAX	PENALTY	
December 31, 1970	1,313.56	656.78	
December 31, 1971	\$ 1,528.02	\$1,542.01	

NAME AND ADDRESS OF TAXPAYER(S) (Number, street, city or town, State, ZIP Code)

Mr. James W. Timek
662 Flatbush Avenue
West Hartford, Connecticut 06110

(The Internal Revenue Service does not require a seal on this form, but if one is used, please place it here.)

Signatures		DATE	
		DATE	
		DATE	
BY	TITLE		

NOTE: The execution and filing of this waiver will expedite the adjustment of your tax liability. It is not, however, a final closing agreement under section 7121 of the Internal Revenue Code and does not preclude assertion of a further deficiency in the manner provided by law if it is later determined that additional tax is due; nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

Furthermore, execution and filing of this waiver will not preclude the taxpayer's filing under section 6511 of the Code a timely claim for refund or credit, on which (if disallowed by the Service) suit may be brought in the appropriate District Court or the U.S. Court of Claims.

This waiver on which a taxpayer agrees to overassessments of income tax and penalty, if any, determined by the Internal Revenue Service will, if executed and filed within the statutory period of limitations for filing a claim for refund or credit, be considered a valid claim for refund or credit of any overpayment of tax and penalty, if any, attributable to the overassessments.

The grounds upon which the overassessments were determined by the Internal Revenue Service shall be considered the bases of the claim.

If this waiver is for a tax year for which a joint return was filed, it must be signed by both husband and wife unless one, acting under a power of attorney, signs as agent for the other.

If the taxpayer is a corporation, this waiver must be signed with the corporate name followed by the signature and title of the officer authorized to sign.

This waiver may be signed by the taxpayer's attorney or agent provided his action is specifically authorized by a power of attorney which, if not previously filed, must accompany the form.

If this waiver is signed by a person acting in a fiduciary capacity (such as executor, administrator, trustee, etc.), Form 56, Notice of Fiduciary Relationship, should, unless previously filed, accompany this form.

AU:R:Y:00

[3]

[Statement continued]
STATEMENT SCHEDULEFORM 3611
(REV. MAR. 1970)

INDIVIDUAL INCOME TAX

#1

NAME		TAXABLE YEARS ENDED		
		1966	1967	1968
Mr. James W. Timok				
TAXABLE INCOME XXXXXXXXXXXXXXXXXXXX AS SHOWN IN				
☒ RETURN AS FILED ☐ PRELIMINARY LETTER DATED ☐ STATUTORY NOTICE DATED		\$16,773.83	\$17,103.04	\$17,266.94
INCREASES (DECREASES) IN INCOME: (See attached explanation of items)				
(a) Capital gains		16,376.13	28,331.49	270.00
(b) Standard deduction		500.00	500.00	500.00
(c) Filing status		-	-	-
TAXABLE INCOME AS REVISED XXXXXXXXXXXXXXXXXXXX		35,649.96	45,934.53	18,036.94
TAX COMPUTATION	TAX	13,931.28 *	19,169.03 *	5,186.62
	TAX SURCHARGE			359.00
	TAX PLUS SURCHARGE	13,931.28	19,169.03	5,575.62
	LESS: TAX CREDITS			
	SUBTOTAL	13,931.28	19,169.03	5,575.62
	ADD:			
	SELF-EMPLOYMENT TAX			
	TAX FROM RECOMPUTING PRIOR YEAR INVESTMENT CREDIT			
	TAX LIABILITY	13,931.28	19,169.03	5,575.62
	LIABILITY PREVIOUSLY ASSESSED			
	per return	4,787.52	4,186.06	4,561.68
	DEFICIENCY XXXXXXXXXXXX	\$ 9,143.76	\$14,982.97	\$ 1,013.94
Addition to Tax - Section 6653(b)		\$ 4,571.88	\$ 7,491.48	\$ 506.97

* See Schedule 1-B for alternative tax computation

AU:R:20D

[2]

STATEMENT CONTINUATION

FORM 3611 REV. MAR. 1970	INDIVIDUAL INCOME TAX	STATEMENT SCHEDULE #1 (Continued)
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NAME		TAXABLE YEARS ENDED		
		1969	1970	1971
Mr. James W. Tinck				
TAXABLE INCOME XXXXXXXXXXXXXXXXXXXX AS SHOWN IN				
☒ RETURN AS FILED ☐ PRELIMINARY LETTER DATED ☐ STATUTORY NOTICE DATED		\$17,707.54	\$20,582.18	\$22,172.14
INCREASES (DECREASES) IN INCOME: (See attached explanation of items)				
(a) Capital gains		2,781.61	946.63	3,036.88
(b) Standard deduction		500.00	500.00	
(c) Filing status		-	-	
(d) Partnership income			(646.48)	
(e) Interest income				3,114.00
TAXABLE INCOME AS REVISED BY XXXXXXXXXXXXXXXXXXXX		20,989.15	21,382.33	28,323.02
TAX COMPUTATION	TAX	6,544.79	6,733.52	10,200.09 *
	TAX SURCHARGE	654.48	168.34	
	TAX PLUS SURCHARGE	7,199.27	6,901.86	10,200.09
	LESS TAX CREDITS			
	SUBTOTAL	7,199.27	6,901.86	10,200.09
	ADD:			
	SELF-EMPLOYMENT TAX			
	TAX FROM RECOMPUTING PRIOR YEAR INVESTMENT CREDIT			
	TAX LIABILITY	7,199.27	6,901.86	10,200.09
	LIABILITY PREVIOUSLY ASSESSED			
	per return	4,837.40	5,538.30	7,116.07
	DEFICIENCY XXXXXXXXXXXX	\$ 2,361.87	\$ 1,313.56	\$ 3,084.02 **
Addition to tax - Section 6653(b)		\$ 1,180.94	\$ 656.78	\$ 1,542.01

* See Schedule 1-B for alternative tax computation

** See Schedule 1-C for computation of net additional tax due

AU:R:90D

[-4-]

Statement continued

Mr. James W. Tinek
662 Flatbush Avenue
West Hartford, Connecticut 06110

Schedule 1-A

Explanation of Adjustments

Taxable Years Ended December 31, 1966 through December 31, 1971, inclusive

(a) It is determined that, in the year 1966, you realized a net long term capital gain in the amount of \$32,752.26 on the sale of 1063 shares of the General Telephone and Electronics Corporation stock which you failed to report on your income tax return. Since such gain is recognized to the extent of 50% thereof, taxable income for 1966 is increased \$16,376.13 as follows:

Selling price	\$48,127.82
Less: Adjusted basis	(15,375.56)
Gain	\$32,752.26
Less: 50%	(16,376.13)
Adjustment	<u>\$16,376.13</u>

It is determined that, in the year 1967, you realized a net long term capital gain in the amount of \$56,662.98 on the sale of 1,646 shares of the General Telephone and Electronics Corporation stock which you failed to report on your income tax return. Since such gain is recognized to the extent of 50% thereof, taxable income for 1967 is increased \$28,331.49 as follows:

Selling price	\$80,331.37 ^{ph 57c}
Less: Adjusted basis	(23,668.39)
Gain	\$56,662.98
Less: 50%	(28,331.49)
Adjustment	<u>\$28,331.49</u>

AU:R:90D

[-5-]

Statement continued

Mr. James W. Timok
662 Flatbush Avenue
West Hartford, Connecticut 06110

Schedule 1-A (Continued)

Explanation of Adjustments

Taxable Years Ended December 31, 1966 through December 31, 1971, inclusive

(a)(continued)

It is determined that, in the year 1968, you realized a net long term capital gain in the amount of \$540.00 on the sale of 200 shares of the First Mortgage Investors stock which you failed to report on your income tax return. Since such gain is recognized to the extent of 50% thereof, taxable income for 1968 is increased \$270.00 as follows:

Selling price	\$3,790.00
Less: Adjusted basis	(3,250.00)
Gain	\$ 540.00
Less: 50%	(270.00)
Adjustment	<u>\$ 270.00</u>

It is determined that, in the year 1969, you realized a net long term capital gain in the amount of \$9,333.23 on the sale of 300 shares of the General Telephone and Electronics Corporation stock which you failed to report on your income tax return. Consequently, taxable income for 1969 is increased \$2,781.61 as follows:

Selling price - General Telephone and Electronics Corp. Stock	\$10,673.76
Less: Adjusted basis	(1,340.55)
Long term gain	\$ 9,333.23
Less: Giant Arrow Fund Investment Club short term loss per return	(5,770.00)
Gain	\$ 3,563.23
Less: 50%	(1,781.62)
Reportable gain	\$ 1,781.61
Add: Loss deducted per return	1,000.00
Adjustment	<u>\$ 2,781.61</u>

AU:R:900

[-6-]

Statement continued

Mr. James W. Timek
662 Flatbush Avenue
West Hartford, Connecticut 06110

Schedule 1-A (Continued)

Explanation of Adjustments

Taxable Years Ended December 31, 1966 through December 31, 1971, inclusive

(a)(continued)

It is determined that you did not sustain a net capital loss in the year 1969. See the preceding paragraph for the basis of this determination. Consequently, there is no capital loss carryover to the year 1970. It is further determined that, in the year 1970, you realized a net long-term loss of \$41.40, and a net short term loss of \$32.67 as your distributive share of the capital losses of the Giant Arrow Fund Investment Club, a partnership, which you failed to deduct on your income tax return. Further, it is determined that, in 1970, you realized an ordinary loss of \$646.48 as your distributive share of the ordinary loss of the Giant Arrow Fund Investment Club, a partnership, which you deducted as a capital loss on your income tax return. As a consequence of these determinations, taxable income for 1970 is increased \$936.73 as follows:

Long term loss adjustment		(\$41.40)
Less: 50% *		<u>20.70</u>
Deductible long term loss		(20.70)
Add: Short term loss per return (\$3,346.48)		
Less: Disallowed capital loss		
carryover	2,700.00	
Reclassified loss	646.48	
Add: Short term loss		
adjustment	<u>(32.67)</u>	<u>(32.67)</u>
Deductible loss		<u>(53.37)</u>
Less: Loss deducted per return		<u>1,000.00</u>
Adjustment		<u>\$ 946.63</u>

* Long-term capital losses are deductible against ordinary income only to the extent of 50% thereof.

AU:R:90D

Mr. James W. Timack
662 Flatbush Avenue
West Hartford, Connecticut 06110

Schedule 1-A (Continued)

Explanation of Adjustments

Taxable Years Ended December 31, 1966 through December 31, 1971, inclusive

(a)(continued)

It is determined that, in the year 1971, you realized a net long term capital gain in the amount of \$5,711.66 on the sale of 200 shares of the General Telephone and Electronics Corporation stock which you failed to report on your income tax return. It is determined, further that you did not sustain a net capital loss in either the year 1969, or the year 1970. See the preceding paragraphs for the basis of this determination. Consequently, there is no capital loss carryover to the year 1971. As a consequence of these determinations, taxable income for 1971 is increased \$3,036.88 as follows:

Selling price - General Telephone and Electronics Corp. Stock	\$6,605.36
Less: Adjusted basis	(893.70)
Long term gain adjustment	\$5,711.66
Add: Long term loss per return (\$3,269.63)	
Less: Disallowed loss carryover	<u>2,023.04</u>
Long term gain	(1,246.59)
Less: Short term loss per return	\$4,465.07
Gain	(391.31)
Less: 50%	\$4,073.76
Reportable gain	(2,036.88)
Add: Loss deducted per return	\$2,036.88
Adjustment	<u>1,000.00</u>
	<u>\$3,036.88</u>

Mr. James W. Timek
662 Flatbush Avenue
West Hartford, Connecticut 06110

Schedule 1-A (Continued)

Explanation of Adjustments

Taxable Years Ended December 31, 1966 through December 31, 1971, inclusive

(b) It is determined that, for the years 1966 through 1970 inclusive, you were married to Catherine Timek. Consequently, you are entitled to the maximum standard deduction for a married person filing a separate return of \$500.00 in lieu of the standard deduction of \$1,000.00 claimed on your income tax returns. Therefore, your taxable income, for the years 1966 through 1970 inclusive, is increased in the amount of \$500.00.

(c) It is determined that, for the years 1966 through 1970 inclusive, you were married to Catherine Timek. Consequently, you are entitled to a married filing separately filing status in lieu of the unmarried head of household filing status claimed on your income tax returns. Therefore, your income tax liability, for the years 1966 through 1970 inclusive, is computed using the married filing separately tax rates.

(d) It is determined that, in the year 1970, you realized an ordinary loss of \$646.48 as your distributive share of the ordinary loss of the Giant Arrow Fund Investment Club, a partnership, which you deducted as a capital loss on your income tax return. In a preceding adjustment, the deduction of this loss as a capital loss was disallowed. Therefore, to complete the reclassification of this loss, your taxable income for 1970 is decreased in the amount of \$646.48.

(e) It is determined that, in the year 1971, you realized interest income in the amount of \$3,114.00 from a foreign bank which you failed to report on your original income tax return. However, on April 14, 1973, you filed an amended return, Form 1040X, on which you reported this income. As this amended return has not previously been assessed, your taxable income for 1971 is increased in the amount of \$3,114.00.

FORM 4089 (REV. MAY 1970)	DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE STATUTORY NOTICE STATEMENT	SYMBOLS AU:R:90D
------------------------------	--	-------------------------

Mr. James W. Timek
 662 Flatbush Avenue
 West Hartford, Connecticut 06110

KIND OF TAX

INCOME

TAX YEAR ENDED	<u>Deficiency</u>	DEFICIENCY <u>Addition to Tax</u> <u>Internal Revenue Code of 1954</u> <u>Section 6653(b)</u>
December 31, 1966	\$ 9,143.76	\$4,571.88
December 31, 1967	14,982.97	7,491.48
December 31, 1968	1,013.94	506.97
December 31, 1969	2,361.87	1,180.94
December 31, 1970	1,313.56	656.78
December 31, 1971	3,084.02	1,542.01
TOTAL	<u>\$31,900.12</u>	<u>\$15,950.06</u>

It is determined that all or part of the underpayment of tax required to be shown on the returns for the taxable years ended December 31, 1966 through December 31, 1971, inclusive, is due to fraud. Consequently, the 50 per centum addition to the tax provided by Section 6653(b) of the Internal Revenue Code of 1954 is asserted for each of those years.

☐ Copy to Authorized Representative:

FORM 3612
REV. APR. 1969

INDIVIDUAL ALTERNATIVE TAX COMPUTATION

STATEMENT SCHEDULE

1-B

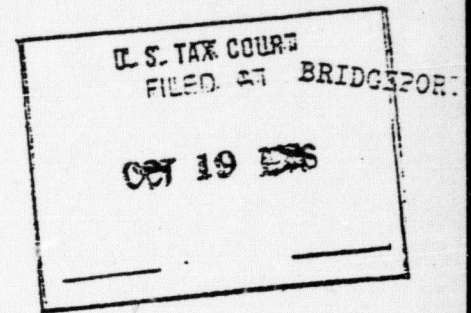
NAME Mr. James W. Timok	TAXABLE YEARS ENDED		
	1966	1967	1971
1. TAXABLE INCOME AS REVISED STATEMENT SCHEDULE 1	\$35,649.96	\$45,934.53	\$28,323.02
2. LESS: 50% OF EXCESS OF NET LONG-TERM CAPITAL GAIN OVER NET SHORT-TERM CAPITAL LOSS	16,376.13	28,331.49	2,036.88
3. BALANCE	19,273.83	17,603.04	26,286.14
4. TAX ON AMOUNT ON LINE 3	5,743.22	5,003.28	9,181.65
5. ADD: 50% OF LINE 2	8,188.06	14,165.75	1,018.44
6. INCOME TAX, ALTERNATIVE METHOD	13,931.28	19,169.03	10,200.09
7. INCOME TAX, REGULAR METHOD	\$14,217.47	\$20,150.72	\$10,261.20

Schedule 1-C

Computation of Net Additional Tax

Taxable Year Ended December 31, 1971

Statutory deficiency	\$3,084.02
Less: Payment with amended return	(1,556.00)
Net additional tax	\$1,528.02
Section 6653(b) - Addition to Tax	<u>\$1,542.01</u>



UNITED STATES TAX COURT

JAMES W. TIMEK

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent

Docket No. 4055-74

STIPULATION OF FACTS

The parties hereby stipulate and agree that for the purposes of this case the following facts and exhibits attached hereto and made a part hereof may be taken as true, subject to the rights of the parties to introduce other and further evidence not inconsistent with this stipulation and preserving the parties' rights to object, at the time of trial, to any and all portions of said stipulation and attached exhibits as they may deem to be irrelevant or immaterial.

1. James W. Timek, the petitioner herein, resided at 662 Flatbush Avenue, West Hartford, Connecticut at the time the petition herein was filed.

2. The petitioner filed federal income tax returns with the respondent for each of the taxable years 1966 through 1971. Copies of said returns are attached hereto and marked Exhibits 1-A through 6-F, respectively.

3. During the taxable year 1966, the petitioner sold 1063 shares of General Telephone and Electronics stock for \$48,127.82.

4. During the taxable year 1967, the petitioner sold 1,646 shares of General Telephone and Electronics stock for \$80,331.37.

5. During the taxable year 1968, the petitioner sold 200 shares of First Mortgage Investors stock for \$3,790.00.

6. During the taxable year 1969, the petitioner sold 300 shares of General Telephone and Electronics for \$10,673.78.

7. During the taxable year 1971, the petitioner sold 200 shares of General Telephone and Electronics for \$6,605.36.

8. During the taxable year 1971, the petitioner realized interest income in the amount of \$3,114.00 which he failed to report on his federal income tax return. On April 14, 1973, the petitioner filed an amended return Form 1040x for the taxable year 1971, a copy of which is attached hereto and marked Exhibit 7-G. Said \$3,114.00 in interest is reflected on Exhibit 7-G.

9. On March 23, 1973, the petitioner entered a plea of guilty to violation of Int. Rev. Code of 1954, §7201 for the taxable year 1967 in the Federal District Court for the District of Connecticut in the case of United States of America v. James W. Timek, Criminal No. H-446.

Also on March 23, 1973, the Court entered a judgment in said case finding the petitioner guilty of violation of Int. Rev. Code of 1954, §7201 for the taxable year 1967.

James W. Timek
JAMES W. TIMEK-Petitioner
18 Foley Street
West Hartford, Connecticut 06110

Date: Oct. 19 - 76

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

By: s/Peter J. Panuthos
PETER J. PANUTHOS
Staff Assistant to the
Regional Counsel
100 Summer Street, Rm. 1728
Boston, Massachusetts 02110
Tel. No. 617-223-7068

Date: OCT 19 1976

Exh. 4-D-Dkt. No. 4055-74

062110734547-0

Form 1040 Combined with Form 1040A US Department of the Treasury / Internal Revenue Service Individual Income Tax Return 1969

For the year January 1-December 31, 1969, or other taxable year beginning 1969, ending 19

Please Use this form.

Correct name, etc., if necessary.

Enter social security number(s) at right only if incorrect or not shown on label.

ST 049-16-0739
JAMES W TIMEK
662 FLATPLUSH AVE
W HARTFORD CONN

0006
06110

Your social security number
049 16 0739

Your occupation
STENOGRAPHER

Spouse's social security number

Enter below name and address used on your return for 1969 (if same as above write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1969 names and addresses.

Spouse's occupation

Name and address of employer at time of filing

Your Filing Status (Check only one):

1 ☐ Single

2 ☐ Married filing joint return (even if only one had income)

3 ☐ Married filing separate return and spouse is also filing a return. If this item checked give spouse's social security number in space provided above and enter last name here: _____

4 ☒ Unmarried Head of Household

5 ☐ Surviving widow(er) with dependent child

6 ☐ Married filing separate return and spouse is not filing a return

Boxes for exemptions which apply

1 ☒ Regular

2 ☐ 65 or over

3 ☐ Blind

4 ☐ Enter number of boxes checked: 1

5 Spouse (applies only if line 2 or line 5 is checked)

6 First names of your dependent children who lived with you

7 Enter number: 1

8 OTHER DEPENDENTS

(a) NAME—Enter figure 1 in the last column to right for each name listed (if more space is needed, use other side)

(b) Relationship

(c) Months lived in your home. See instructions, B-2.

(d) \$500 or more income?

(e) Support you furnished? If 1969 write "ALL."

(f) Support furnished by dependent and others

9 *John Timek* *mother* *12* *no* *\$1700* *\$* *1*

10 Total exemptions from lines 7, 8, and 9 above: *1001*

Your Income

11 Wages, salaries, tips, etc. (Attach Form W-2 to back. If unavailable, explain on back) 11 *19,583.74*

12a Dividends (Total before exclusion) *1,075.32* 12b Loss Exclusion *\$100* Balance 12c *978.32*

13 Interest (Enter total here and if over \$100, also list in Schedule B, Part II) 13 *346.48*

14 Other Income: Total from attached schedules (check schedules used—C ☐, D ☒, E ☐, F ☐) 14 *1000.00*

15a Total (Add lines 11, 12c, 13 & 14) *22,907.54* 15b Less Adjustments (1969) *1,000.00* Adjusted Gross Income 15c *21,907.54*

Your Tax and Surcharge

16 If line 15c is \$5,000 or more, go to Schedule T, to figure tax and surcharge. (Omit lines 16 and 17.)

17 Go to Sch. T to figure tax and surcharge if you itemize deductions; or claim retirement income credit, foreign tax credit, or investment credit; or if you owe self-employment tax or tax from recomputing prior year investment credit (Omit lines 16 and 17.)

18 If neither of above two items applies, go to Tax Tables instead of Sch. T. Complete lines 16, 17, & 18.

16 Tax from Tax Table (see tables on T-2 and T-3) 16 *15*

17 Tax surcharge on line 16 (see T-1 for tax surcharge tables) 17 *17*

18 Enter total of lines 16 and 17 OR amount from Schedule T, line 18, if applicable (check if from Tax Table A ☐, B ☐, C ☐, Tax Rate Sch. ☐, Sch. D ☐, or Sch. G ☐). 18 *477.28*

Your Credits

19 Total Federal income tax withheld (attach Forms W-2 to back) 19 *350.47*

20 Excess F.I.C.A. tax withheld (two or more employers—see R-2) 20 *377.40*

21 ☐ Nonhighway Federal gasoline tax, Form 4139; ☐ Reg. Inv., Form 2439 21 *0*

22 1969 Estimated tax payments (include 1969 overpayment allowed as a credit) 22 *0*

23 Total (add lines 19, 20, 21, and 22) 23 *727.87*

Balance Due or Refund

24 If line 18 is larger than line 23, enter BALANCE DUE. Pay in full with return *951.41* 24 *920.29*

25 If line 23 is larger than line 18, enter OVERPAYMENT 25 *0*

26 Line 25 to be: (a) Credited on 1970 estimated tax *\$* (b) Refunded to *\$*

Sign here

Under penalties of perjury, I declare that I have prepared this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Your signature *James W. Timek*

Spouse's signature (if filing jointly, BOTH must sign even if only one had income)

Signature of preparer other than taxpayer, based on self information of which he has any knowledge.

Date

Address

Please attach Copy C of Form W-2 to back

Please attach Check or Money Order here

SCHEDULE D
(Form 1040)

Department of the Treasury
Internal Revenue Service

Sales or Exchanges of Property

See instructions on D-1 and D-2.
If you use this schedule, attach it to Form 1040.

1969

Name as shown on Form 1040

James W. Lemke

Social Security Number

044 16 0739

Part I—CAPITAL ASSETS—Short-term capital gains and losses—assets held not more than 6 months

a. Kind of property. Indicate security, real estate, or other (Specify)	b. Description (Examples: 100 sh. of "X" Co., 2 story brick, etc.)	c. How acquired. Enter letter symbol (See instr.)	d. Date acquired (mo., day, yr.)	e. Date sold (mo., day, yr.)	f. Gross sales price	g. Depreciation allowed (or allowable) since acquisition	h. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale	i. Gain or loss (If plus g less h)
<i>Short Term Capital Gain</i>	<i>170 shares of X Co.</i>		<i>7-10-69</i>		<i>20,190</i>			

- 2 Enter your share of net short-term gain (or loss) from partnerships and fiduciaries
- 3 Enter unused short-term capital loss carryover from preceding taxable years (attach statement)
- 4 Net short-term gain (or loss) from lines 1, 2, and 3 *5770.00*

Long-term capital gains and losses—assets held more than 6 months (12 months or more for certain livestock)

5 Enter gain from Part II, line 3								
---	--	--	--	--	--	--	--	--

Total long-term gross sales price

- 6a Enter your share of net long-term gain (or loss) from partnerships and fiduciaries
- 6b Enter your share of net long-term gain from small business corporations (Subchapter S)
- 7 Enter unused long-term capital loss carryover from preceding taxable years (attach statement)
- 8 Capital gain dividends
- 9 Net long-term gain (or loss) from lines 5, 6a, 6b, 7, and 8

- 10 Combine the amounts shown on lines 4 and 9, and enter the net gain (or loss) here *5770.00*
- 11 IF LINE 10 SHOWS A GAIN—Enter 50% of line 9 or 50% of line 10, whichever is smaller. (Enter zero if there is a loss or no entry on line 9.) (See reverse side for computation of alternative tax.)
- 12 Subtract line 11 from line 10. Enter here and in Part IV, line 1, on reverse side
- 13 IF LINE 10 SHOWS A LOSS—Enter here and in Part IV, line 1, the smallest of: (a) line 10; (b) line 3, Sch. T., (line 15c, Form 1040, if tax table used) computed without capital gains or losses; or (c) \$1,000 *1000.00*

Part II—GAIN FROM DISPOSITION OF DEPRECIABLE PROPERTY UNDER SECTIONS 1245 AND 1250—assets held more than 6 months (see instructions on D-1 for definitions)

Where double headings appear, use the first heading for section 1245 and the second heading for section 1250.

a. Kind of property and how acquired (if necessary, attach statement of descriptive details not shown below—write 1245 or 1250 to indicate type of asset)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale
1				

f. Depreciation allowed (or allowable) since acquisition		g. Adjusted basis (a less sum of f-1 and f-2)	h. Total gain (d less g)	i. Ordinary gain (losser of f-2 or h) (see instructions)	j. Other gain (loss)
1-1. Prior to January 1, 1962	1-2. After December 31, 1961				
Prior to January 1, 1964	After December 31, 1963				

- 2 Total ordinary gain. Enter here and in Part IV, line 2, on reverse side
- 3 Total other gain. Enter here and in Part I, line 5; however, if the gains do not exceed the losses when this amount is combined with other gains and losses from section 1231 property enter the total of column j in Part III, line 1

Schedule D (Form 1043) 1963

Part III—PROPERTY OTHER THAN CAPITAL ASSETS

a. Kind of property and how acquired (If necessary, attach separate sheet with descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Depreciation allowed (or allowable) since acquisition	f. Cost or other basis, net of cost of improvements and gross profit, with explanation and expenditure of sale	g. Gain or loss (d plus e less f)
1 Enter gain from Part II, line 3						
2 Enter your share of partnership and fiduciary gain (or loss) from property other than capital assets						
3 Net gain (or loss) from lines 1 and 2. Enter here and in Part IV, line 3						

Part IV—TOTAL GAINS OR LOSSES FROM SALE OR EXCHANGE OF PROPERTY

1 Net gain (or loss) from Part I, line 12 or 13	
2 Total ordinary gain from Part II, line 2	
3 Net gain (or loss) from Part III, line 3	
4 Total net gain (or loss), combine lines 1, 2, and 3. Enter here and include in total on line 14, Form 1043	1020

COMPUTATION OF ALTERNATIVE TAX—It will usually be to your advantage to use the alternative tax if the net long-term capital gain exceeds the net short-term capital loss, or if there is a net long-term capital gain only, and you are filing (a) a separate return with taxable income exceeding \$25,000, or (b) a joint return, or as a surviving husband or wife, with taxable income exceeding \$32,000, or (c) as a head of household with taxable income exceeding \$38,000.

1 Enter the amount from Schedule T, line 5	
2 Enter amount from Part I, line 11, on reverse side	
3 Subtract line 2 from line 1	
4 Enter tax on amount on line 3 (use applicable tax rate schedule on T-1)	
5 Enter 50% of line 2	
6 Alternative tax (add lines 4 and 5). If smaller than the tax figured on the amount on Schedule T, line 5, enter this alternative tax on Schedule T, line 5, also check Schedule D box on Form 1043, line 13	

INSTRUCTIONS (References are to the Internal Revenue Code)

GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY—Report details in appropriate part or parts.

In column (c) of Part I and column (a) of Parts II and III use the following symbols to indicate how the property was acquired: "A" for purchase on the open market; "B" for exercise of stock option or through employee stock purchase plan; "C" for inheritance or gift; "D" for exchange involving carryover of prior asset basis; and "E" for other.

"Capital assets" defined.—The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business) but does not include—

- (a) stock in trade or other property of a kind properly includible in his inventory if on hand at the close of the taxable year;
- (b) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;
- (c) property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 167;
- (d) real property used in the trade or business of the taxpayer;
- (e) certain government obligations issued on or after March 1, 1941, at a discount, payable without interest and maturing at a fixed date not exceeding 1 year from date of issue;
- (f) certain copyrights, literary, musical, or artistic compositions, etc.; or
- (g) accounts and notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property related to (a) or (b) above.

Special rules apply to dealers in securities for determining capital gain or ordinary loss on the sale or exchange of securities. Certain real property acquired for sale may be treated as capital assets. Sections 1223 and 1227.

If the total distributions to which an employee is entitled under an employee's pension, bonus, or profit-sharing trust plan, which is exempt from the under section 501(c)(3), are paid to the employee in one taxable year, on account of the employee's separation from service, the part of the amount of such distribution, to the extent it exceeds the amounts contributed by the employee, shall be treated as a long-term capital gain. (See section 402(a).)

Gain on sale of depreciable property between husband and wife or between a shareholder and a "controlled corporation" shall be treated as ordinary gain.

Gains and losses from transactions described in section 1231 shall be treated as gains and losses from the sale or exchange of capital assets held for more than 6 months if the total of more gains exceeds the total of more losses. If the total of these gains does not exceed the

total of these losses, such gains and losses shall not be treated as gains and losses from the sale or exchange of capital assets. Thus, in the event of a net gain, all these transactions should be entered in Part I of Schedule D. In the event of a net loss, all these transactions should be entered in Part III of Schedule D, or in other applicable schedules on Form 1043.

Section 1231 deals with gains and losses arising from—

- (a) sale, exchange, or involuntary conversion, of land (including in certain cases unharvested crops sold with the land) and depreciable property if they are used in the trade or business and held for more than 6 months;
- (b) sale, exchange, or involuntary conversion of livestock held for draft, breeding, or dairy purposes (but not including poultry) and held for 1 year or more;
- (c) the cutting of timber or the disposal of timber, coal, or domestic iron ore, to which section 631 applies; and
- (d) the involuntary conversion of capital assets held more than 6 months.

See sections 1231 and 631 for specific conditions applicable.

Gain from disposition of depreciable property under sections 1245 and 1250—assets held more than 6 months. (a) If the gain from such property held for 6 months or less is less than \$100,000, except as provided below section 1245 property means depreciable (1) personal property (other than livestock) including intangible personal property; (2) tangible personal property (except automobiles and their structural components); if used as an integral part of communication, production, or operation, or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or used as a research or storage facility in connection with these activities; and (3) elements and escalators.

Except as provided below section 1250 property means depreciable real property (other than section 1245 property).

See sections 1245(b) and 1250(a) for exceptions and limitations. (1) depreciation by gift; (2) transfers at death; (3) certain tax-exempt transactions; (4) like-kind exchanges, involuntary conversions; (5) sales or exchanges to eliminate FCC policies and conditions to comply with F.C.C. orders; (6) property distributed to a partner, or to a partner, and (7) in position of principal residence (section 1250 only).

Column I or Part II.—In computing depreciation allowed or allowable for elevators or escalators, enter in column I-1 depreciation prior to July 1, 1963, and in column I-2 depreciation after June 30, 1963.

(Instructions continued on D-2)

Form 1040 1970 US Department of the Treasury / Internal Revenue Service Individual Income Tax Return For the year January 1-December 31, 1970, or other taxable year beginning 1970, ending 1970

Please print or type

ST 049-16-0739 D006
JAMES W TIMEK
662 FLATHUSH AVE
W HARTFORD CONN 06110

Your social security number 049 16 0737
Spouse's social security number
Occupation Yours: Steno Typist
Spouse's

Filing Status—check only one:

1 ☐ Single: 2 ☐ Married filing jointly (even if only one had income)
3 ☐ Married filing separately and spouse is also filing. If this item checked give spouse's social security number in space above and enter first name here
4 ☒ Unmarried Head of Household
5 ☐ Surviving widow(er) with dependent child
6 ☐ Married filing separately and spouse is not filing

Exemptions Regular / 65 or over / Blind Enter number of boxes checked

7 Yourself ☒ ☐ ☐
8 Spouse (applies only if item 7 checked) ☐ ☐ ☐
9 First names of your dependent children who lived with you
10 Number of other dependents (from line 34) 1
11 Total exemptions claimed 2

Income

12 Wages, salaries, tips, etc. (Attach Forms W-2 to back. If unavailable, attach explanation) 12 22,540.83
13a Dividends (see pages 5 and 9 of instr.) \$ 969.32 13b Less exclusion \$ 100 Balance 13c 869.32
(Also list in Part I of Schedule B, if gross dividends and other distributions are over \$100)
14 Interest. Enter total here (also list in Part II of Schedule B, if total is over \$100) 14 422.03
15 Income other than wages, dividends, and interest (from line 40) 1000.00 15 1000.00
16 Total (add lines 12, 13c, 14 and 15) 16 23,832.18
17 Adjustments to income (such as "sick pay," moving expense, etc. from line 45) 17 1000.00
18 Adjusted gross income (subtract line 17 from line 16) 18 22,832.18

See page 2 of instructions for rules under which the IRS will figure your tax and surcharge.
If you do not itemize deductions and line 18 is under \$10,000, find tax in Tables. Enter tax on line 19.
If you itemize deductions or line 18 is \$10,000 or more, go to line 46 to figure tax.

Tax and Surcharge

19 Tax (Check if from: Tax Tables 1-15 ☐ Tax Rate Schedule X, Y, or Z ☒ Schedules D ☐ or Schedule G ☐) 19 545.2
20 Tax surcharge. See Tax Surcharge Tables A, B and C in instructions. (If you claim retirement income credit, use Schedule R to figure surcharge.) 20 136.30
21 Total (add lines 19 and 20) 21 5588.30

Payments and Credits

22 Total credits (from line 55) 22
23 Income tax (subtract line 22 from line 21) 23
24 Other taxes (from line 61) 24
25 Total (add lines 23 and 24) 25 5588.30
26 Total Federal income tax withheld (attach Forms W-2 to back) 26 36.51
27 1970 Estimated tax payments (include 1969 overpayment allowed as a credit) 27
28 Other payments (from line 65) F.I.C.R. 28 374.40
29 Total (add lines 26, 27, and 28) 29 3996.04

Bal. Due or Refund

30 If line 25 is larger than line 29, enter BALANCE DUE. Pay in full with return 30 1592.26
31 If line 29 is larger than line 25, enter OVERPAYMENT 31
32 Line 31 to be: (a) Credited on 1971 estimated tax \$ (b) Refunded \$

Sign here

James W. Timek Date
Under penalties of perjury, I declare that I prepared this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.
Spouse's signature (if filing jointly, BOTH must sign even if only one had income)
Signature of preparer other than taxpayer, based on all information of which he has any knowledge. Date
Address

Foreign Accounts

Check appropriate box

Did you, at any time during the taxable year, have any interest in or signature or other authority over a bank, securities, or other financial account in a foreign country (except in a U.S. military banking facility operated by a U.S. financial institution)? ☐ Yes ☒ No
If "Yes," attach Form 4683. (For definitions, see Form 4683.)

PART I.—Additional Exemptions (Complete only for other dependents claimed on line 10)

33. (a) NAME	(b) Relationship	(c) Months lived in your home, if born or died during year write "0"	(d) Did dependent have income of \$525 or more?	(e) Amount YOU furnished for dependent's support, if 100% write "ALL"	(f) Amount furnished by others, if any, state
<i>Alan Smith</i>	<i>Wife</i>	<i>12</i>	<i>No</i>	<i>\$1800</i>	

34. Total number of dependents listed above. Enter here and on line 10 ▶ *1*

PART II.—Income other than Wages, Dividends, and Interest

35. Business income (or loss) (attach Schedule C)	35		
36. Sale or exchange of property (attach Schedule D)	36	<i>1000</i>	<i>00</i>
37. Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc. (attach Schedule E)	37		
38. Farm income (or loss) (attach Schedule F)	38		
39. Miscellaneous income (state nature and source)	39		
40. Total (add lines 35, 36, 37, 38, and 39). Enter here and on line 15 ▶	40	<i>1000</i>	<i>00</i>

PART III.—Adjustments to Income

41. "Sick pay" if included in line 12 (attach Form 2440 or other required statement)	41		
42. Moving expenses (attach Form 3903)	42		
43. Employee business expense (attach Form 2106 or other statement)	43		
44. Payments as a self-employed person to a retirement plan, etc. (attach Form 2950SE)	44		
45. Total adjustments (add lines 41, 42, 43, and 44). Enter here and on line 17 ▶	45		

PART IV.—Tax Computation

46. Adjusted gross income (from line 18)	46	<i>22832</i>	<i>18</i>
47. (a) If you itemize deductions, enter total from Schedule A, line 22 (b) If you do not itemize deductions, and line 46 is \$10,000 or more, enter \$1,000 (\$500 if married and filing separately)	47	<i>1000</i>	
48. Subtract line 47 from line 46	48	<i>21832</i>	<i>18</i>
49. Multiply total number of exemptions claimed on line 11, by \$625.	49	<i>1250</i>	
50. Taxable income. Subtract line 49 from line 48. (Figure your tax on this amount by using Tax Rate Schedule X, Y, or Z unless the alternative tax or income averaging is applicable.) Enter tax on line 51	50	<i>20582</i>	<i>18</i>
51. Tax. Enter here and on line 19 ▶	51	<i>5452</i>	

PART V.—Credits

52. Retirement income credit (attach Schedule R)	52		
53. Investment credit (attach Form 3469)	53		
54. Foreign tax credit (attach Form 1116)	54		
55. Total credits (add lines 52, 53, and 54). Enter here and on line 22 ▶	55		

PART VI.—Other Taxes

56. Self-employment tax (attach Schedule SE)	56		
57. Tax from recomputing prior-year investment credit (attach Form 4255)	57		
58. Minimum tax. See instructions on page 7. Check here ☐ if Form 4625 is attached	58		
59. Social security tax on unreported tip income (attach Form 4137)	59		
60. Uncollected employee social security tax on tips (from Forms W-2)	60		
61. Total (add lines 56, 57, 58, 59, and 60). Enter here and on line 24 ▶	61		

PART VII.—Other Payments

62. Federal income tax withheld (two or more employers—see instructions on page 7)	62	<i>571</i>	
63. Credit for Federal tax on gasoline, special fuels, and lubricating oil (attach Form 4135)	63		
64. Registered Investment Company Credit (attach Form 2439)	64		
65. Total (add lines 62, 63, and 64). Enter here and on line 23 ▶	65		

SCHEDULE D
(Form 1040)

Department of the Treasury
Internal Revenue Service

Sales or Exchanges of Property

► Attach to Form 1040.

1971

Name(s) as shown on Form 1040

James W. Link

Social Security Number

049-16-0739

Capital Assets—Short-term capital gains and losses—assets held not more than 6 months

a. Kind of property. Indicate security, real estate, or other (specify)	b. Description (Examples: 100 sh. of "Z" Co., 2 story brick, etc.)	c. How acquired. Enter letter symbol (see instr.)	d. Date acquired (mo., day, yr.)	e. Date sold (mo., day, yr.)	f. Gross sales price	g. Depreciation allowed (or allowance) since acquisition	h. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale	i. Gain (or loss) (f plus g less h)
<i>1. Stock</i>	<i>Common Stock, Western Union</i>		<i>9-10-69</i>		<i>28000</i>		<i>24197.00</i>	<i>646.48</i>
<i>2. Stock</i>	<i>Common Stock, Western Union</i>						<i>24196.90</i>	<i>2700.00</i>

- 2 Enter your share of net short-term gain (or loss) from partnerships and fiduciaries
- 3 Enter net gain (or loss) from lines 1 and 2
- 4 Enter unused short-term capital loss carryover from preceding taxable years (attach statement)
- 5 Net short-term gain (or loss) from lines 3 and 4 *3,346.48*

Long-term capital gains and losses—assets held more than 6 months

6								

- 7 Capital gain distributions
- 8 Enter gain from Part VII, line 47 or line 51(a), whichever applicable
- 9 Enter your share of net long-term gain (or loss) from partnerships and fiduciaries
- 10 Enter your share of net long-term gain from small business corporations (Subchapter S)
- 11 Net gain (or loss) from lines 6 through 10
- 12 Enter unused long-term capital loss carryover from preceding taxable years (attach statement)
- 13 Net long-term gain (or loss) from lines 11 and 12

14 Combine the amounts shown on lines 5 and 13, and enter the net gain (or loss) here *3,346.48*

15 If line 14 shows a gain—

- (a) Enter 50% of line 13 or 50% of line 14, whichever is smaller (see Part IV for computation of alternative tax). Enter zero if there is a loss or no entry on line 13
- (b) Subtract line 15(a) from line 14. Enter here and on line 17, Part II

16 If line 14 shows a loss—

- (a) Add lines 4 and 12 (if lines 4 and 12 are blank, enter a zero here and on lines 16(b) and 16(c) and go to line 16(d))
- (b) Combine lines 3 and 11—if gain, enter gain; if loss, enter zero
- (c) Enter smallest of (i) line 16(a) less line 16(b); (ii) line 48, Form 1040 (line 18, Form 1040 if tax table used) disregarding capital gains and/or losses—determine this figure via a side computation; or (iii) \$1,000 *1000*
- (d) Combine lines 3 and 11—if loss, enter loss; if gain, enter zero here and on line 16(e), and go to line 16(f)
- (e) Enter smallest of (i) line 48, Form 1040 (line 18, Form 1040 if tax table used) disregarding capital gains and/or losses, less line 16(c)—determine this figure via a side computation; (ii) \$1,000 (\$500 if married and filing separately); (iii) if line 3 is zero or shows a gain, 50% of line 16(d); (iv) if line 11 is zero or shows a gain, amount on line 16(d); or, (v) if lines 3 and 11 show losses, line 3 added to 50% of line 11
- (f) Enter here, and on line 17, Part II, the sum of lines 16(c) and 16(e)—(Do not enter an amount greater than \$1,000) *1000*

Summary of Schedule D Gains and Losses

- 17 Net ~~loss~~ (or loss) from line 15(b) or 16(e), Part I *(1000)*
- 18 Net gain (or loss) from line 22, Part III
- 19 Total net ~~loss~~ (or loss), combine lines 17 and 18. Enter here and on line 36, Form 1040 *(1000)*

PART I.—Additional Exemptions (Complete only for other dependents claimed on line 10)

32 (a) NAME	(b) Relationship	(c) Months lived in your home. If born or died during year, write B or D.	(d) Did dependent have income of \$675 or more?	(e) Amount YOU furnished for dependent's support. If 100% write ALL	(f) Amount furnished by OTHERS including dependent.
				\$	\$

33 Total number of dependents listed above. Enter here and on line 10. ▶

PART II.—Income other than Wages, Dividends, and Interest

34 Business income or (loss) (attach Schedule C)	34		
35 Net gain or (loss) from sale or exchange of capital assets (attach Schedule D)	35	1000	00
36 Net gain or (loss) from Supplemental Schedule of Gains and Losses (attach Form 4797)	36		
37 Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc. (attach Schedule E)	37	721	31
38 Farm income or (loss) (attach Schedule F)	38		
39 Miscellaneous income: (a) Fully taxable pensions and annuities not reported on Schedule E—see instructions on page 7			
(b) 50% of capital gain distributions (not reported on Schedule D)			
(c) State income tax refunds (caution—see instructions on page 7)			
(d) Alimony			
(e) Other (state nature and source)			
(f) Total miscellaneous income (add lines 39(a), (b), (c), (d) and (e))	39		
40 Total (add lines 34, 35, 36, 37, 38, and 39). Enter here and on line 15 ▶	40	1721	31

PART III.—Adjustments to Income

41 "Sick pay" if included in line 12 (attach Form 2440 or other required statement)	41		
42 Moving expense (attach Form 3903)	42		
43 Employee business expense (attach Form 2106 or other statement)	43	60	00
44 Payments as a self-employed person to a retirement plan, etc. (attach Form 2850SE)	44		
45 Total adjustments (add lines 41, 42, 43, and 44). Enter here and on line 17 ▶	45	60	00

PART IV.—Tax Computation (Do not use this part if you use Tax Tables 1-13 to find your tax.)

46 Adjusted gross income (from line 18)	46	23597	14
47 (a) If you itemize deductions, enter total from Schedule A, line 32 and attach Schedule A	47	750	00
(b) If you do not itemize deductions, and line 46 is: (1) \$10,000 or more but less than \$11,533.43, enter 13% of line 46 (2) \$11,533.43 or more, enter \$1,500. Note: deduction under (1) or (2) is limited to \$750 if married and filing separately.			
48 Subtract line 47 from line 46	48	22847	14
49 Multiply total number of exemptions claimed on line 11, by \$675	49	675	00
50 Taxable income. Subtract line 49 from line 48 ▶	50	22172	14

(Figure your tax on the amount on line 50 by using Tax Rate Schedule X, Y or Z, or if applicable, the alternative tax from Schedule D, income averaging from Schedule G, or maximum tax from Form 4726.) Enter tax on line 19.

PART V.—Credits

51 Retirement income credit (attach Schedule R)	51		
52 Investment credit (attach Form 3468)	52		
53 Foreign tax credit (attach Form 1116)	53		
54 Total credits (add lines 51, 52, and 53). Enter here and on line 20 ▶	54		

PART VI.—Other Taxes

55 Self-employment tax (attach Schedule SE)	55		
56 Tax from recomputing prior-year investment credit (attach Form 4255)	56		
57 Minimum tax (see instructions on page 8). Check here ☐ , if Form 4625 is attached	57		
58 Social security tax on unreported tip income (attach Form 4137)	58		
59 Uncollected employee social security tax on tips (from Forms W-2)	59		
60 Total (add lines 55, 56, 57, 58, and 59). Enter here and on line 22 ▶	60		

PART VII.—Other Payments

61 Excess FICA tax withheld (two or more employers—see instructions on page 8)	61	405	60
62 Credit for Federal tax on special fuels, nonhighway gasoline and lubricating oil (attach Form 4136)	62		
63 Regulated Investment Company Credit (attach Form 2439)	63		
64 Total (add lines 61, 62, and 63). Enter here and on line 26 ▶	64	405	60

Part IV Capital Loss Limitation—Where Losses are Shown on Lines 12(a) AND 13

17 Enter loss from line 5; if line 5 is zero or a gain, enter a zero	17	91.21
18 Enter loss from line 13	18	35.43
19 Enter gain, if any, from line 5; if line 5 is zero or a loss, enter a zero	19	
20 Reduce loss on line 18 to the extent of the gain, if any, on line 19	20	35.43
21 Combine lines 3 and 11 and if gain, enter gain; if zero or a loss, enter a zero NOTE: If the entry on line 21 is zero, OMIT lines 22 through 28, and enter on line 29 the loss shown on line 12(a).	21	
22 Enter gain, if any, from line 11	22	
23 Enter smaller of amount on line 21 or line 22	23	
24 Enter excess of gain on line 21 over amount on line 23	24	
25 Enter loss from line 4(a); if line 4(a) is blank, enter a zero	25	
26 Reduce gain, if any, on line 24 to the extent of loss, if any, on line 25	26	
27 Enter loss from line 12(a)	27	
28 Add the gain(s) on line(s) 23 and 26	28	
29 Reduce the loss on line 27 to the extent of the gain, if any, on line 28	29	70.34
30 Subtract amount on line 29 from the loss on line 20	30	12.41
31 Enter 50% of the amount on line 30	31	6.21
32 Add lines 17, 29, and 31	32	103.74
33 Enter here and on line 35, Form 1040, the smaller of: (a) Amount on line 32; (b) Taxable Income, as adjusted (see Instruction J); or, (c) \$1,000 (\$500 if married and filing a separate return—see Instruction K for a higher limit not to exceed \$1,000)	33	1000.00

Part V Complete Part V if Losses are Shown on Lines 4(a), 5, AND 14 (See Instruction L)

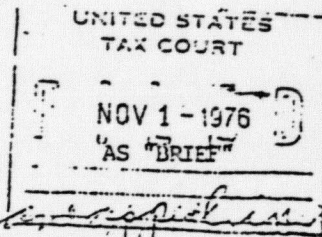
34 Combine lines 3 and 11 and if gain, enter gain; if zero or a loss, enter a zero NOTE: If the entry on line 34 is zero, OMIT lines 35 through 41, and enter on line 42 the loss shown on line 4(a).	34	
35 Enter gain, if any, from line 3	35	
36 Enter smaller of amount on line 34 or line 35	36	
37 Enter excess of gain on line 34 over amount on line 36	37	
38 Enter loss from line 12(a); if line 12(a) is blank, enter a zero	38	
39 Reduce the gain, if any, on line 37 to the extent of the loss, if any, on line 38	39	
40 Enter loss from line 4(a)	40	
41 Add the gain(s) on line(s) 36 and 39	41	
42 Reduce the loss on line 40 to the extent of the gain, if any, on line 41	42	

Part VI Computation of Alternative Tax (See Instruction T to See if the Alternative Tax Will Benefit You)

43 Enter amount from line 50, Form 1040	43	
44 Enter amount from line 15(a)	44	
45 Subtract amount on line 44 from amount on line 43	45	
46 Enter smaller of amount on line 13 or line 14 If line 46 does not exceed \$50,000 (\$25,000 if married filing separately), check this block ☐ and omit lines 47 through 56.	46	
47 Enter long-term gains from certain binding contracts, distributions, and installment sales (referred to as "certain subsection d gains"—see Instruction T)	47	
48 Enter amount from line 47 or \$50,000 (\$25,000 if married filing separately), whichever is larger If line 48 is equal to or greater than line 46, check this block ☐ and omit lines 49 through 55.	48	
49 Multiply amount on line 48 by 50%	49	
50 Add amounts on lines 45 and 49	50	
51 Subtract amount on line 48 from amount on line 46	51	
52 Tax on line 43 or 44, whichever is greater (use Tax Rate Schedule in instructions)	52	
53 Tax on the amount on line 50 (use Tax Rate Schedule in instructions)	53	
54 Subtract amount on line 53 from amount on line 52	54	
55 Multiply amount on line 51 by 32½%	55	
56 Enter smaller of amount on line 54 or 55	56	
57 Tax on the amount on line 45 (use Tax Rate Schedule in instructions)	57	
58 If the block on line 46 or 48 is checked, enter 50% of line 44; otherwise enter 25% of line 48	58	
59 Alternative Tax—add amounts on lines 56 (if applicable), 57, and 58. If smaller than the tax figured on the amount on line 50, Form 1040, enter this alternative tax on line 19, Form 1040	59	

JAMES W. TIMEK

Proctor



Oct. 28, 1976

Dkt. No. 4055-74

Dear Judge Scott,

I am submitting ~~an appeal~~ *in reference to* docket no. 4055-74 in which I was tried Oct. 20, 1976. The appeal is for consideration of losses between a bank savings account and my former counsel stealing money (my money) intended for the Internal Revenue Service. These two losses both the result of corruption total better than \$101,000. This is more than double the U.S. claims I owe and better than 80% of my assets. You have a record of the losses in the file of docket no. 4055-74. The bank bankruptcy occurred Dec. 20, 1972 and my former counsel's theft Apr. 13, 1973.

With the remaining assets I have left and my income it would be impossible to maintain a pace to keep up with the pace at which the fraud, interest and tax penalty would travel. In other words with my assets and income the tax liability would constantly outdistance me.

I hope you will find it in your conscience
to pass favorable judgment on this matter.
I am 55 years old a diabetic with failing
eyesight. I am not seeking sympathy merely
just consideration.

Respectfully,
James W. Clinch
18 Foley St.
W. Hartford, Conn.
06110

T. C. Memo. 1976-357

UNITED STATES TAX COURT

JAMES W. TIMEK, Petitioner y. COMMISSIONER OF
INTERNAL REVENUE, Respondent

Docket No. 4055-74.

Filed November 29, 1976.

James W. Timek, pro se.

Justin S. Holden, for the respondent.

[2 -]

MEMORANDUM FINDINGS OF FACT AND OPINION

SCOTT, Judge: Respondent determined deficiencies in petitioner's income tax and additions to tax under section 6653(b), I.R.C. 1954,¹ for the years and in the amounts as follows:

<u>Tax Year Ended</u>	<u>Deficiency</u>	<u>Addition to Tax Sec. 6653(b), I.R.C. 1954</u>
December 31, 1966	\$ 9,143.76	\$4,571.88
December 31, 1967	14,982.97	7,491.48
December 31, 1968	1,013.94	506.97
December 31, 1969	2,361.87	1,180.94
December 31, 1970	1,313.56	656.78
December 31, 1971	3,084.02	1,542.01

The issues for decision are (1) whether respondent properly determined the amount of unreported capital gains received by petitioner in each of the years here in issue, and (2) whether any part of the underpayment of tax by petitioner in each of the years here in issue was due to fraud.

FINDINGS OF FACT

Some of the facts have been stipulated and are found accordingly.

1

All statutory references are to the Internal Revenue Code of 1954, as amended.

[- 3 -]

Petitioner, who resided in West Hartford, Connecticut at the time of the filing of his petition in this case, filed individual Federal income tax returns for each of the calendar years 1966, 1967, 1968, 1969, 1970, and 1971.

During the calendar year 1966, petitioner sold 1,063 shares of General Telephone and Electronics Corporation (General Telephone) stock for \$48,127.82. Petitioner realized a gain on the sale of this stock. At the time petitioner filed his Federal income tax return for the year 1966, he was aware that he had made a gain on the sale of the 1,063 shares of General Telephone stock in the year 1966 and that part of the gain was taxable income. He did not refer to the sale of this stock on his Federal income tax return or include any part of the gain from the sale in his reported income.

During the calendar year 1967, petitioner sold 1,646 shares of General Telephone stock for \$80,331.37. At the time petitioner filed his Federal income tax return for the year 1967, he knew that he had realized a taxable gain on the

[4 -]

sale of the 1,646 shares of General Telephone stock and that tax was due on that gain. He did not at any place on his return report the sale of the 1,646 shares of General Telephone stock or include in his income any gain with respect to the sale of that stock. On March 23, 1973, petitioner entered a plea of guilty to violation of section 7201 for the taxable year 1967 in the United States District Court for the District of Connecticut in the case of United States of America v. James W. Timek, Criminal No. H-446. On that same date, that court entered a judgment in that case finding petitioner guilty of violation of section 7201 for the year 1967.

During the calendar year 1968 petitioner sold 200 shares of First Mortgage Investors stock for \$3,790. At the time petitioner filed his Federal income tax return for the calendar year 1968, he knew he had a gain on the sale of the 200 shares of First Mortgage Investors stock in the calendar year 1968, but on his Federal income tax return for that year he did not report the sale of this stock or include in his taxable income any amount of the gain he realized on the sale of that stock.

[- 5 -]

During the calendar year 1969, petitioner sold 300 shares of General Telephone stock for \$10,673.78. At the time petitioner filed his Federal income tax return for the calendar year 1969, he knew he had a gain on the sale of the 300 shares of General Telephone stock, but he did not show the sale of this stock at any place on his Federal income tax return for that year or include any part of the gain on that stock in his reported income on the return. On his Federal income tax return for the calendar year 1969, petitioner reported on Schedule D the sale of 170 shares of Giant Arrow Fund Investment Club stock on September 10, 1969, at a gross sales price of \$22,190 with a net short-term loss of \$5,770. On page 1 of his 1969 return, he listed on Line 14 "Other income" \$1,000 of this loss and reduced his otherwise reported income by that amount.

On Schedule D of his Federal income tax return for the calendar year 1970, petitioner showed the following:

Capital Assets--Short-term capital gains and losses--assets held not more than 6 months

<u>Kind of Property</u>	<u>Description</u>	<u>How Acquired</u>	<u>Date Acquired</u>	<u>Gross Sales Price</u>	<u>Cost or Other Basis, Cost of Subsequent Improvements</u>	<u>Gain (or Loss)</u>
Giant Arrow Fund	220 Shares	Advest	9-10-69	28000	Year 1970	646.48
Investment Club		[sic]			Year 1969	<u>2700.00</u>
Net short-term gain (or loss) from lines 3 and 4						<u><u>3346.48</u></u>

[7 -]

In Part II of Schedule D "Summary of Schedule D Gains and Losses," petitioner showed a Total net loss of \$1,000 and on page 1 of his 1970 Federal income tax return reduced his otherwise reported income by \$1,000, which was shown on Line 15 "Income other than wages, dividends, and interest" as "loss 1,000."

At the time petitioner filed his Federal income tax return for the calendar year 1970, he knew that he had sufficient capital gains in the calendar year 1969 to offset all of his capital losses for that year from a sale in that year of Giant Arrow Fund Investment Club stock at a loss, and that, in fact, he had no loss carryover from the sale of this stock to the calendar year 1970.

During the calendar year 1971, petitioner sold 200 shares of General Telephone stock for \$6,605.36. At the time petitioner filed his Federal income tax return for the calendar year 1971, he knew he had a gain on the sale of the 200 shares of General Telephone stock. The sale of this stock was not reported by petitioner on his Federal

[- 8 -]

income tax return for the calendar year 1971 and no part of the gain petitioner realized in the year 1971 from the sale of this stock was included in the income reported on petitioner's Federal income tax return for that year.

During the calendar year 1971, petitioner realized interest income in the amount of \$3,114 which he failed to report on his Federal income tax return. On April 14, 1973, petitioner filed an amended return (Form 1040X) for the calendar year 1971 on which the \$3,114 of interest income was reported.

Petitioner began acquiring stock of General Telephone in 1949. He did not retain records of the cost of the stock he acquired. Petitioner had since 1949, when he began purchasing General Telephone stock, maintained a brokerage account with Shearson, Hammill & Co. in Hartford, Connecticut. This brokerage firm had records with respect to petitioner's account for the years 1966 through 1971. This brokerage firm had not retained records of petitioner's accounts for the years prior to 1965. From petitioner's brokerage account

[9 -]

respondent's agents were able to obtain the certificate numbers of the General Telephone stock and the First Mortgage Investors stock which petitioner sold during the years 1966 through 1971. With these certificate numbers, respondent's agents were able to determine the date each certificate was issued. Because of having no records from which to determine the amount which petitioner paid for the stocks he sold during the years 1966 through 1971, respondent's agents inquired as to how far in advance of issuance of a stock certificate the stock covered by such certificate was purchased and concluded that generally stock was purchased approximately 3 weeks prior to the date of the issuance of the certificate. Respondent's agents checked the published stock market reports for the listed stocks which petitioner had purchased for the entire third week preceding the date of the issuance of a certificate of stock to petitioner. They used as petitioner's purchase price of the stock the highest reported market price at which the stock sold during the

[- 10 -]

third week preceding the week the stock certificate was issued to petitioner. By using a cost computed in this manner for the stocks sold by petitioner in the years here in issue and the actual sales price petitioner received for these stocks, respondent's agents computed petitioner's gain on the sale of the stocks for each year here in issue.

Respondent, in his notice of deficiency to petitioner, increased petitioner's reported income by the capital gains on the sale of the General Telephone stock and First Mortgage Investors stock which petitioner sold during these years and the interest income which petitioner failed to report in the year 1971. In the year 1969 respondent reduced petitioner's computed capital gains by the capital loss petitioner sustained on the sale of Giant Arrow Fund Investment Club stock and in 1970 disallowed the capital loss carryover claimed by petitioner from the sale of this stock.

Petitioner in his petition alleged error in respondent's determination in that respondent's

[- 11 -]

determination of sales price of the stocks in the various years here in issue was too high and his determination of cost of the stocks was too low. At the trial, petitioner stipulated the correctness of the sales price of the stocks as determined by respondent. Petitioner in his petition also alleged the bar of the statute of limitations on the assessment of deficiencies for the years 1966, 1967, 1968, 1969, and 1970.

OPINION

Section 6653(b) provides that if any part of any underpayment of tax required to be shown on a return is due to fraud there shall be added to the tax an amount equal to 50 percent of the underpayment. The burden is on respondent to establish fraud by clear and convincing evidence. Where a taxpayer has been convicted under section 7201 for willful attempt to evade or defeat tax for a particular year, he is collaterally estopped from contesting in a civil fraud case in this Court respondent's determination of an addition to tax for fraud for that same year. John W. Amos, 43 T.C. 50 (1964), affd. 360 F.2d 358 (4th Cir. 1965); Arctic Ice Cream Co., 43 T.C. 68 (1964).

[- 12 -]

Under the facts here present, petitioner is estopped to deny that a part of his underpayment of tax for the year 1967 was due to fraud. For the years 1966, 1968, 1969, 1970, and 1971, petitioner testified that at the time he filed his returns he knew that he had omitted part of his income and that for that reason his tax as reported was understated. Petitioner offered no excuse or explanation for knowingly understating his tax on his return. Considering the amount of petitioner's understatement of tax and the consistent pattern of his knowing understatements, in our view the evidence here is clear and convincing that a part of petitioner's understatement of tax in each of the years here in issue was due to fraud.

Section 6501(a) provides that except as otherwise provided, the amount of any income tax shall be assessed within 3 years after the return was filed. Section 6501(b) provides that where an income tax return is filed before the last day prescribed by law for filing such a return, the return shall be considered for purposes of

[- 13 -]

section 6501(a) as filed on such last day. Section 6501(c) provides that in the case of the filing of a false or fraudulent return with intent to evade tax the tax may be assessed at any time. Since the deficiency notice in this case was mailed on April 2, 1974, the statute of limitations with respect to assessment of tax would have expired as to the years 1966, 1967, 1968, and 1969 absent fraud. However, for the same reasons we have determined that part of petitioner's underpayment of tax in each of the years here in issue was due to fraud, we hold that petitioner's income tax returns for each of the years 1966, 1967, 1968, 1969, 1970, and 1971 were false and fraudulent with intent to evade tax and therefore the assessment of tax is not barred by the statute of limitations in any of the years here in issue.

At the trial, petitioner argued that he thought respondent's computation of the cost of the stocks he sold was less than the amounts he had paid for such stocks. Petitioner figured by estimating what he thought he paid for the

[- 14 -]

stocks sold in each year that the amount of his understatement of income was less in several of the years than the amount of understatement determined by respondent. Petitioner, however, admitted he had no records and his computation was based merely on estimates. Absent records, the method used by respondent to compute petitioner's cost of his stocks is reasonable and fair. We, therefore, sustain respondent's determination.

Petitioner's main contention in this case appears to be that he should be given some allowance for a loss he sustained in 1972 on funds he had invested in a savings account in a bank in Nassau, Bahamas, and an amount of \$15,000 which he gave to an attorney in 1973 to pay on his Federal income tax liabilities which the attorney had not paid to the Internal Revenue Service at the time of his death. No issues are involved in this case with respect to the years 1972 and 1973 and those years are not here before us. Therefore, whether petitioner has shown that he actually sustained losses

[- 15]

in the years 1972 and 1973 is immaterial to
any issue involved in this case.

Decision will be entered
for the respondent.

UNITED STATES TAX COURT
WASHINGTON

JAMES W. TIMEK,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 4055-74.

DECISION

Pursuant to the determination of the Court as set forth in its Memorandum Findings of Fact and Opinion, filed November 29, 1976, it is

ORDERED and DECIDED: That there are deficiencies in income tax and in addition to tax due from the petitioner for the taxable years ending December 31, 1966, 1967, 1968, 1969, 1970 and 1971 as follows:

<u>Tax Year Ended</u>	<u>Deficiency</u>	<u>Addition to Tax Sec. 6653(b), I.R.C. 1954</u>
December 31, 1966	\$ 9,143.76	\$4,571.88
December 31, 1967	14,982.97	7,491.48
December 31, 1968	1,013.94	506.97
December 31, 1969	2,361.87	1,180.94
December 31, 1970	1,313.56	656.78
December 31, 1971	3,084.02	1,542.01

James F. Scott

Judge.

Entered: NOV 30 1976

Decision is correct and in accord with stipulation, opinion or Rule 50 computation.

[Signature]
(Attorney)

12/8/76
(Date)

copy to AD
(3-4) 126-76
b3

FORM 8

NOTICE OF APPEAL TO COURT OF APPEALS

(See Rules 190 and 191)

UNITED STATES TAX COURT

JAMES W. TIMEK.....

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 4055-74

NOTICE OF APPEAL

Notice is hereby given that JAMES W. TIMEK hereby appeals to the United States Court of Appeals for the 9th Circuit from [that part of] the decision of this court entered in the above captioned proceeding on the 30 day of November 1976 [relating to Tax Liability].

James W. Timek

1852 St.

W. Hartford, Conn.
06110

March 5, 1977

Mr. Crivelli
Clerk's Office
U.S. Court of Appeals
Foley Square
New York, N. Y. 10007

77-4043

Dear Mr. Crivelli:

I am making an appeal in my tax liability Case No. 4055-74. The appeal is based on two facts. First, the foreign bank at which I held two accounts is the International Bank and Trust Limited of Nassau, Bahamas. One account, No. 3-9376, represents \$64,170.24. The other account, No. 3-9737, represents \$22,325.48. The total of these two accounts is \$86,495.72. This bank has gone bankrupt. The liquidation indicates fraud and as of this date has not been resolved.

Second fact, my former attorney, James N. Egan, now deceased, received \$15,000 from me to be sent to the Internal Revenue Service as payment on behalf of my civil charges related to this tax liability. A check for \$10,000 was made out to the I.R.S. as is indicated in the proof herein. I have been informed by the administrator of Egan's estate it never reached the purpose for which it was intended.

These two losses, both the result of corruption totalled better than \$101,000. The I.R.S. claims I owe them \$47,850. As you can see, these two losses far exceed that which the I.R.S. claims I owe. These two losses also liquidated most of my assets.

I have a diabetic condition with failing eyesight. I am 55 years of age and am not seeking sympathy, merely just consideration.

Respectfully,

James W. Timek

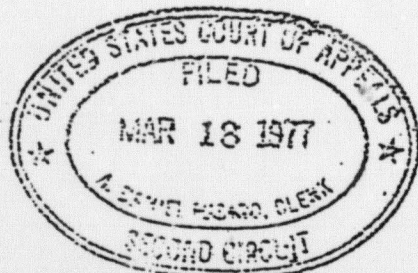
18 Foley St. 2

W. Hartford, Conn.

06110

5-13622

DEPARTMENT OF JUSTICE	
2	MAY 02 1977
TAX DIV.	
RECORD	



THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING ACCOUNT		JAMES N. EGAN ATTORNEY AT LAW HARTFORD, CONN. 06106	No. 12130
TOTAL OF INVOICES			April 12, 1973
LESS PAYMENTS			\$1-65
LESS DEDUCTIONS			1/1
AMOUNT OF CHECK			
TOTAL AMOUNT DUE		PAY TO THE ORDER OF INTERNAL REVENUE SERVICE	\$ 10,000.00
		TEN THOUSAND AND NO/100 DOLLARS	
		 United Bank & Trust Company HARTFORD, CONNECTICUT	
IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY		⑆0111⑈00691⑆ 01⑈372 806 ⑆	